

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 21

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 27, 2018.

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14 Castellano, Mr. Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,
17 Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,
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1 THE COURT: All right. Good morning,
2 everyone. I appreciate everybody being here and
3 ready to go on time.

4 Let me go over a few things with you. I
5 think Ms. Standridge showed you the jury note form
6 that she's prepared for the jurors that Ms. Wild
7 sent to Ms. Standridge and Ms. Standridge gave to
8 y'all. My understanding is that everyone has
9 approved of the note form for the jury. I'll mark
10 it as Exhibit U; is that correct, Mr. Castellano,
11 Mr. Beck?

12 MR. BECK: Yes, Your Honor.

13 THE COURT: All right. Is that also
14 correct from the defendants? Not hearing any
15 objection, that will be the form that we'll use.

16 Let me finish up, while I have a chance,
17 on Count 8, which is Count 3. In addition to what I
18 was going to say -- the only other thing I was going
19 to say is because Mr. Baca doesn't appear to me to
20 have been able to have committed the generic
21 conspiracy to commit assault resulting in a serious
22 bodily injury as against Mr. Romero, if Mr. Romero
23 did not suffer serious bodily injury. So it doesn't
24 appear to me that Mr. Baca could have violated VICAR
25 as alleged in Count 8, our Count 3, if Mr. Romero

1 did not suffer serious bodily injury.

2 I think it would be a good idea if the
3 Government ran this past Mr. Braun and Mr. Williams
4 to see if they are going to be able and willing to
5 defend any conviction on that count. If they can't
6 come up with something that convinces me that this
7 is legally sufficient, given the fact there is no
8 serious bodily injury, then it seems to me we
9 probably ought to take it out. But I'll give y'all
10 a chance to talk to Mr. Braun and to Mr. Williams,
11 and get back with me as to what their thoughts on
12 that are.

13 MR. CASTELLANO: We will, Your Honor.
14 We'll discuss it with them, as well as the
15 organized -- organized crime racketeering section,
16 who generally approves these charges and is familiar
17 with these types of charges. We will.

18 THE COURT: Well, they might just not be
19 familiar with the fact that, you know, unless the
20 Government is saying something else, that there is
21 just no serious bodily injury here.

22 MR. CASTELLANO: Right. And the
23 background of the statute requires typically a
24 violation of the generic definition of the term,
25 which the Court has touched on. And so we'll look

1 further into kind of what -- what meets the
2 requirements of generic definition of a crime with
3 that type of name. It's usually the closest crime
4 you can find in the statute to what's named in the
5 federal statute.

6 THE COURT: All right. I have been
7 through all the materials that were sent to me over
8 the weekend on the jury instruction. I do
9 appreciate it. I do appreciate the work. There are
10 gaps, however, so we don't need to let our feet off
11 the pedal here as we try to bring these jury
12 instructions to a conclusion.

13 Right this minute, Mr. Hammond, my law
14 clerk, is sending those back to Albuquerque to be
15 typed. And I'll try to give you a draft. So you'll
16 see, it will keep you from having to read everything
17 over again. You'll see what I'm sending back for
18 changes.

19 Let me go over a few things while we're
20 waiting for the jury to come in. Let me talk a
21 little bit about whether we call them defendants or
22 whether we call them by their names. The Tenth
23 Circuit introductory note to the pattern
24 instructions -- and I'm quoting here, "The committee
25 suggests the defendant's name be used in the

1 instructions rather than generically referring to
2 the defendant."

3 So that's typically the way I have done
4 it, and I think most of the judges in this district
5 do it. But I'm not as familiar with other judges as
6 I am myself. But I almost always do it. If the
7 defendants are real insistent on this, and the U.S.
8 agrees to go with just "defendants," we'll do it.

9 Otherwise, if one of the sides hangs with
10 me, I'll probably just leave it as is, with the
11 names of the defendants, and so otherwise, I'll not
12 change it across the board. I will consider not
13 using names if at some point it's kind of weird and
14 there were points where I thought it didn't make
15 sense to do that. Are they all here?

16 Let me make a few final comments now to
17 think about. I've got a bunch of comments. But let
18 me make these. On Instruction Number 33, y'all
19 agreed to remove it. And if you want it out, that's
20 fine. I did take just the second sentence out. I
21 thought it was beneficial for the defendants, that
22 instruction.

23 If you think about it -- and let's not get
24 too lost in the weeds, here. The jury is going to
25 know that all of the defendants are in prison, have

1 been in prison, whatever they're thinking about,
2 because a lot of activities take place in prison.
3 So I took out the second sentence that no
4 convictions were being used here to impeach their
5 credibility.

6 But nonetheless, it seems to me that the
7 jury ought to be told just because they committed
8 crimes in the past, that shouldn't mean -- doesn't
9 mean they committed the crime here. If you want it
10 in without that second sentence, we'll leave it in.
11 If you don't want it in, I'll take it out. But
12 y'all both agreed to leave it in.

13 Also, y'all both took out the modified,
14 modified Allen instruction. Let me give you my
15 thinking on this. If the defendants want it out, it
16 will come out. But the reason that I left it in is
17 because I wanted you to hear my philosophy on this.

18 If I put the modified, modified Allen
19 instruction in my instructions, then, if the jury
20 gets stuck, the only touch I'm going to do with the
21 jury is to tell them to relook at that instruction.
22 If they get stuck, I'll send a note back and tell
23 them they'll get stuck.

24 If, however, the defendants insist on it
25 coming out, it will come out, and I'll give the

1 modified Allen instruction. I think that's a
2 heavier touch. The Tenth Circuit prefers the way
3 I'm suggesting we do it.

4 Defendants are, you know, divided. I have
5 some defendants that like it and some don't. But
6 let me know, because if the defendants decline to do
7 it this way, which is a lighter touch, and they get
8 stuck, all I do is tell them to reread that
9 instruction, and that it's -- I don't give a
10 modified Allen instruction. But if you take it out,
11 and the jury gets stuck, I will give the modified
12 Allen instruction. So it's a lighter touch, but
13 I'll leave it pretty much to the defendants to make
14 that call.

15 All right. All rise.

16 (The jury entered the courtroom.)

17 THE COURT: Well, good morning, ladies and
18 gentlemen. I appreciate you being back and on time
19 and ready to go. I appreciate the attorneys and
20 parties being here. There's a lot of people to get
21 organized every day, but y'all made it very easy by
22 just being wonderful about being here. And I
23 appreciate it very much.

24 All right, Mr. Brewster, I'll remind you
25 that you're still under oath.

1 Mr. Beck, if you wish to continue your
2 cross-examination of Mr. Brewster, you may do so at
3 this time.
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1 JAMES BREWSTER,
2 after having been previously duly sworn under
3 oath, was questioned and continued testifying as
4 follows:

5 CROSS-EXAMINATION (Continued)

6 BY MR. BECK:

7 Q. Mr. Brewster, yesterday we were talking
8 about the document -- the property file that you
9 provided for Reynaldo Enriquez. Do you remember
10 that?

11 A. Yes, sir.

12 Q. And I handed you what's been marked as
13 Government's Exhibit 773, and I think looked over it
14 and said that it was the documents that you provided
15 to Ms. Jacks via her IPRA request; right?

16 A. That's correct.

17 MR. BECK: At this time, Your Honor, the
18 United States moves admission of Government's
19 Exhibit 773.

20 THE COURT: Any objection this morning on
21 that?

22 MS. JACKS: Well, Your Honor, I'm
23 wondering if they're offering it as a Government or
24 an official record, contrary to their position on
25 these records yesterday?

1 THE COURT: Well -- and I made a ruling on
2 that. Do you want to lay an evidentiary basis for
3 it?

4 MS. JACKS: I'm just asking for what
5 exception to the hearsay rule the Government is now
6 claiming.

7 THE COURT: I understand your point. But
8 I'm asking Mr. Beck.

9 MR. BECK: Sure, Your Honor. I think
10 yesterday the Court admitted these documents under
11 803(15). So the United States seeks to admit these
12 documents under the Court's previous ruling.

13 MS. JACKS: There is no objection, other
14 than the fact that the exhibit is incomplete and
15 inaccurate.

16 THE COURT: All right. Government's
17 Exhibit 773. Is there any other objection or any
18 comments from the defendants?

19 Government's Exhibit 773 will be admitted
20 into evidence.

21 (Government Exhibit 773 admitted.)

22 BY MR. BECK:

23 Q. And if that's the document that you sent
24 to me, to our office, that you provided to Ms.
25 Jacks, do you believe it's complete as to what you

1 provided in the IPRA request?

2 A. I believe that it is, yes.

3 Q. Okay. Thank you. And so I'm going to
4 come back to 773. But I'd like to go back over with
5 you what's been admitted, I believe, as Defendants'
6 Exhibit W7.

7 THE CLERK: It hasn't been admitted.

8 MS. JACKS: I'm sorry, Your Honor. That
9 wasn't admitted. I think just one page of that
10 document was admitted. If the Government wants to
11 admit it, I have no objection.

12 MR. BECK: The United States moves to
13 admit Defendants' Exhibit W7.

14 THE COURT: All right. Defendants'
15 Exhibit W7 will be admitted into evidence.

16 Was there any other objection from any
17 other defendant? Not seeing any, W7 will be
18 admitted into evidence.

19 (Defendants' Exhibit W7 admitted.)

20 BY MR. BECK:

21 Q. Mr. Brewster, do you remember going over
22 this yesterday with Ms. Jacks?

23 A. Yes, I do.

24 Q. And this is the New Mexico Corrections
25 Department Inmate Property and Laundry Policy that

1 was in effect -- well, it was revised in September
2 2013; is that right?

3 A. That's correct.

4 Q. So this was in effect in March of 2014; is
5 that right?

6 A. That's correct.

7 Q. And I'm going to go to the third page of
8 that document. And if we look -- well, let's start
9 with the second page. So this second page is
10 providing the overall definitions of terms used to
11 develop this policy; is that right?

12 A. That's correct.

13 Q. Now, I'll take you to the third page where
14 those definitions are continued, and if we focus in
15 on G. That defines legal materials; is that right?

16 A. You know, I can't read it because it's in
17 dark red, and I can't read what it says.

18 Q. Sorry. I underlined "G," which is right
19 above it, I'm sorry.

20 A. Right above it, "G," does define legal
21 materials.

22 Q. And separately defined below that is "K,"
23 personal property; is that right?

24 A. That's correct.

25 Q. And now I'm going to take you to what's

1 been admitted as Defendants' Exhibit W8. Do you
2 remember this property inventory list you discussed
3 yesterday?

4 A. Yes, sir, I do.

5 Q. And under this document inventory list,
6 there is not a classification for what we just
7 looked at, legal materials distinguished from
8 personal property, is there?

9 A. Let me look at it closely a second,
10 please.

11 Q. Yes, sir, please do.

12 A. Can you repeat your question, please?

13 Q. Sure. My question was under this property
14 inventory list, there is not a distinction of what
15 we just read as personal property versus legal
16 materials, is there?

17 A. I don't see one, no.

18 Q. This document does, though, to be fair,
19 talk about legal papers there to the right of where
20 I just marked in red?

21 A. Yes, it does.

22 Q. Now, I'm going to go back to page 3 of
23 Defendants' Exhibit W7.

24 And I think -- tell me if you disagree
25 with me, but it looks like all of the terms defined

1 with "L" would appear on page 3 of this document; is
2 that right?

3 A. Yes, sir.

4 Q. And under "Legal materials," there is no
5 definition for "Legal mail," is there?

6 A. No, sir.

7 Q. No definition for "Legal letters"?

8 A. No, sir.

9 Q. No definition for "Legal paperwork"?

10 A. No, sir.

11 Q. No definition for "Legal folders"?

12 A. That's correct.

13 Q. And in this -- and in this definition of
14 "Legal materials," it defines "Legal materials" only
15 as the inmate's ongoing legal matter; is that right?

16 A. That's correct.

17 Q. I'm going to go now to page 8 of this
18 document. Sorry, I guess there are two documents in
19 this exhibit. Let's go to Bates No. 53405.

20 All right. So Bates 53405, this says page
21 8, and I want you to focus in on Subsection I, right
22 there, "Property Inventory Procedure for Transfers."
23 Do you see that?

24 A. I do, yes, sir.

25 Q. And is this the portion of this policy

1 that deals with the property inventory procedure for
2 transfers that you discussed yesterday with Ms.
3 Jacks?

4 A. Yes, sir.

5 Q. And I'm going to go to the next page. And
6 in section 3 of this policy, does this state that
7 the sending unit or facility will be responsible for
8 completing the property inventory list, collecting
9 all property in the inmate's possession prior to
10 transfer?

11 A. Yes, it does.

12 Q. And it says that the inventory should be
13 conducted in the presence of the inmate, and the
14 property officer and the inmate should sign the
15 form; is that right?

16 A. That's correct.

17 Q. And do you remember yesterday that -- with
18 what was admitted as Defendants' U2, Lupe Urquizo's
19 property inventory file, that only Lupe Urquizo, the
20 inmate, signed that document. Do you remember that?

21 A. I do remember that, yes, sir.

22 Q. Then further down, Number 6, this
23 paragraph says, "The property inventory officer at
24 the receiving unit will inventory all property
25 within 24 hours in the presence of the inmate and

1 complete a Property Inventory List form." Is that
2 right?

3 A. Yes, sir.

4 Q. And then, "Any property that is
5 nontransferable shall be listed on the Receipt for
6 Confiscated Property forms. Property officer shall
7 be proper arrangements for the disposal of the
8 property in accordance with this procedure"?

9 A. That's correct.

10 Q. And do you remember yesterday, when you
11 looked through -- I don't remember if we looked
12 through Lupe Urquizo's documents, but we can get to
13 that later.

14 So 3 and 6 taken together, here, am I
15 correct in reading that, that when an inmate is
16 transferred, there should be two property inventory
17 lists, one from the departing facility and one from
18 the receiving facility?

19 A. That's correct.

20 Q. And there may be a receipt for confiscated
21 property form if any property was confiscated; is
22 that right?

23 A. Yes, sir.

24 Q. And then it goes from 6 to 12, there, but
25 paragraph 12, the next paragraph, does that -- and

1 you can read it to yourself -- but does that say if
2 the property inventory officer -- the property
3 officer isn't present, that the shift supervisor
4 should ensure that the proper forms are still
5 completed?

6 A. It does say that, yes, it does.

7 Q. And then I want to go on to the next page.
8 So Section N, here, is this the section of this
9 policy that deals with the disposal of the property
10 if there's property that needs to be disposed by the
11 department?

12 A. That's correct.

13 Q. And in paragraph 2, then, it says, "The
14 inmate designates how the property is to be disposed
15 of by completing a Receipt for Confiscated Property
16 form;" is that right?

17 A. Yes, sir.

18 Q. And it says that this form will become
19 part of inmate's property file; is that right?

20 A. Yes, sir.

21 Q. So does that mean that anytime confiscated
22 property -- there is a form for confiscated
23 property, that that form should remain part of
24 property file for that inmate?

25 A. Yes, it should.

1 Q. And I'm going to take you to the next
2 page, Section P. Does this section deal with the
3 policy for legal materials retained by the inmates?

4 A. Yes, it does.

5 Q. Section 1, there -- paragraph 1, does that
6 indicate that the amount of personal property -- the
7 amount of personal property an inmate has, including
8 legal materials, is limited to the amount that an
9 inmate may store in his or her living area in a
10 designated space?

11 A. Yes, sir.

12 Q. Then on the next page. Paragraph 2, does
13 that say that inmates will be allowed to retain
14 legal materials with regard to cases they intend to
15 file in the near future, for cases that have already
16 been filed and are still active, provided the amount
17 or otherwise are in conformance with the policy. I
18 know that's not word for word, but is that basically
19 what that says?

20 A. Yes, sir, it is.

21 Q. And is this different, saying that cases
22 that they intend to file in the near future, cases
23 that have already been filed and still active. Is
24 that different from the definition of legal
25 materials, which said that legal materials are of a

1 legal nature which are pertinent and necessary to
2 the inmate's own ongoing legal matter. Is what's
3 written in paragraph 2 different than an ongoing
4 legal?

5 A. It is different.

6 Q. And then I want to take you a couple of
7 pages ahead, to Bates 53412, which is page 14. And
8 I want to direct your attention to section V of this
9 policy. Is that the section that deals with storage
10 of excess legal property and mail for inmates?

11 A. Yes, it is.

12 Q. So does this section apply when an inmate
13 has more legal property and mail than may fit in the
14 designated storage area that we just read about in
15 the last section?

16 A. Yes, it does.

17 Q. And so that section starts at page 15, and
18 then if we turn to the next page, goes on to page
19 16. And then if we turn to the next page, continues
20 to page 18 -- page 17 of that, which isn't marked,
21 and it continues for about two pages, total. Do you
22 see that?

23 A. I do, yes, sir.

24 Q. And is that policy in place because
25 inmates sometimes have more legal materials than

1 they can fit in the designated storage area?

2 A. That happens quite often, yes.

3 Q. All right, thank you.

4 Now, I want to move to Government's
5 Exhibit 773, which has now been admitted. And
6 again, yesterday we talked about this was the
7 property inventory file that you found when you
8 searched for Ms. Jacks' IPRA request; isn't that
9 right?

10 A. Yes, sir.

11 Q. And that IPRA request was for all
12 materials for three inmates on or about March 16,
13 2014 (sic)?

14 A. Yes, it had to do with their property
15 disposition.

16 Q. March 6 of 2014; is that right?

17 A. Yes.

18 Q. And this is the only property file that
19 you found for Reynaldo -- excuse me, let me ask this
20 question first: Those three inmates were Lupe
21 Urquizo, the second was Mauricio Varela, and the
22 third was Reynaldo Enriquez; isn't that right?

23 A. That's correct.

24 Q. And this was the only property inventory
25 file -- or property file, excuse me, that you found

1 for Reynaldo Enriquez in the New Mexico Corrections
2 Department; right?

3 A. Yes, sir.

4 Q. Now, I want to take you to a couple pages
5 in, Bates No. 28647. Is this a property inventory
6 list for Reynaldo Enriquez that is signed by him at
7 the bottom, 1/28/2016?

8 A. It appears to have been that, yes.

9 Q. And we talked about this yesterday, but
10 isn't it true that in 2016, the Penitentiary of New
11 Mexico filling out a property inventory list when
12 they receive an inmate should have filled it out
13 under the policy under the New Mexico Corrections
14 Department Property Inventory List, and not this
15 property list?

16 A. That's correct.

17 Q. Isn't it also true that under the policy,
18 the inventory officer -- the property officer should
19 have taken this inventory in the inmate's presence,
20 and signed whatever -- whatever property inventory
21 list he completed with the inmate, or she completed
22 with the inmate, in the inmate's presence; isn't
23 that true?

24 A. That's what the policy requires, yes.

25 Q. And this document isn't signed by any

1 inventory officer, is it?

2 A. It is not.

3 Q. Now, I want to focus your attention here
4 to the bottom of what's listed under "Items Not
5 Listed." And that item says, "Three manila
6 envelopes;" is that right?

7 A. I'm not seeing that.

8 Q. Right above where I marked in red.

9 A. Okay. Okay, I see it now. What's your
10 question?

11 Q. Does that read, "Three manila envelopes?"

12 A. It does, part of it does.

13 Q. Part of it does. Thank you. Yes. And
14 then over on the left under "Miscellaneous items,"
15 there are no legal letters marked there, are there?

16 A. That is correct.

17 Q. And I think you said earlier, just a few
18 moments ago, that it often happens that inmates have
19 so much legal material or excess mail that they have
20 to have more storage provided to them in the bin; is
21 that right?

22 A. Yes, it's fairly common.

23 Q. And I'm going to show you, right up here,
24 a manila envelope. Is this a manila envelope that
25 I'm showing you in front of the courtroom?

1 A. Yes, it is.

2 Q. Have you seen a manila envelope like this
3 before?

4 A. Yes, sir.

5 Q. And would it surprise you if a lawyer
6 mailed legal mail to an inmate in this manila
7 folder?

8 A. No, sir.

9 Q. That wouldn't -- and it wouldn't surprise
10 you if an inmate kept the legal materials in an
11 envelope that was marked "Legal mail," would it?

12 A. No, sir.

13 Q. Because there are certain restrictions on
14 what --

15 MS. JACKS: Your Honor, I'm going to
16 object. It's irrelevant what surprises Mr.
17 Brewster.

18 THE COURT: No, I think it's relevant.
19 Overruled.

20 BY MR. BECK:

21 Q. And it wouldn't surprise you because there
22 are certain restrictions under New Mexico
23 Corrections Department policy as to who can look
24 through and read documents that are inside of an
25 envelope marked "Legal mail;" is that right?

1 A. That's correct.

2 Q. And, in fact, a property officer, when
3 inventorying property, can't just read through
4 everything that may be legal materials; isn't that
5 right?

6 A. That's correct.

7 Q. At the top of this form it says,
8 "Transferred from SNMCF;" is that right?

9 A. Yes, sir.

10 Q. And I just -- I think yesterday Ms. Jacks
11 asked you a question about a Penitentiary of New
12 Mexico property form in Lupe Urquizo's file that had
13 a date marked at the top of the document like that;
14 is that right?

15 A. Yes.

16 Q. And we didn't see anywhere in the policy
17 where it says there should be a date marked on the
18 top of the form, did we?

19 A. I don't think it's in the policy, no, sir.

20 Q. And so that date on the top, there, do you
21 know whether this form was filled out on 1/28/16 or
22 1/27/2016?

23 A. I can't tell by looking at the dates.

24 Q. And I want to step away from this for a
25 second, and go back to Defendants' Exhibit W8.

1 This is the Corrections Department
2 property inventory list that should have been used
3 in 2016; isn't that right?

4 A. That's correct.

5 Q. And up at the top, here, there is just a
6 facility -- a space to mark the facility; is that
7 right?

8 A. Yes, sir.

9 Q. And at the time that these policies were
10 in place, since 2013, at least, each facility, the
11 sending and the receiving facility, were required to
12 take a property inventory list when they sent an
13 inmate or received an inmate; isn't that right?

14 A. That's correct.

15 Q. And now I want to go back to what's been
16 admitted as Government's Exhibit 773.

17 Before I do that, are you familiar with
18 New Mexico Corrections Department Offender Physical
19 Location Histories?

20 A. Yes, sir, I'm familiar with them.

21 Q. I'm going to show you what's been marked
22 for identification purposes as Government's Exhibit
23 774, which is also Defendants' Exhibit V10.

24 MR. BECK: Your Honor, the United States
25 moves to admit Government's Exhibit 774.

1 THE COURT: Any objection?

2 MS. JACKS: No, Your Honor.

3 THE COURT: Any other objection, comment?

4 All right. Not hearing any, Government's
5 Exhibit 774 will be admitted into evidence.

6 MS. JACKS: This is an official record.
7 Is that how it's being offered?

8 MR. BECK: I'm not sure I offered it,
9 but -- I offered it under that theory, but it could
10 be.

11 (Government Exhibit 774 admitted.)

12 BY MR. BECK:

13 Q. So I'm showing you now what's been
14 admitted as Government's Exhibit 774. Is this an
15 offender physical location history for Reynaldo
16 Enriquez?

17 A. It's the first page of it, yes, sir.

18 Q. And I'm going to direct your attention
19 here to sort of the top third of this page. And
20 specifically to January 27 of 2016.

21 A. Okay.

22 Q. On January 27 of 2016, Reynaldo Enriquez
23 was moved from the Southern New Mexico Correctional
24 Facility to the Penitentiary of New Mexico; isn't
25 that right?

1 A. Yes, sir.

2 Q. Now, I'm going to go back to Government's
3 Exhibit 773, Bates No. 28647.

4 So we just looked at Reynaldo Enriquez
5 being moved on January 27, 2016. Do you remember
6 that?

7 A. Yes.

8 Q. And it looks like -- at least according to
9 this document, it looks like next to the inmate's
10 signature is January 28 of 2016; isn't that right?

11 A. That's correct.

12 Q. So it looks like maybe, possibly this
13 document was signed one day after Reynaldo Enriquez
14 was transferred to the Penitentiary of New Mexico;
15 is that right?

16 A. It does appear that way, yes.

17 Q. And indeed, according to the New Mexico
18 Corrections Department policy, an inmate at the
19 receiving institution, the property inventory list
20 -- the other property inventory list, at least,
21 should be filled out within 24 hours of an inmate
22 arriving at the facility; is that right?

23 A. That's correct.

24 Q. Then, if we go to the next page of this
25 document. So is this another Penitentiary of New

1 Mexico property inventory list for Reynaldo
2 Enriquez?

3 A. Yes, it is.

4 Q. And this document has no signatures at the
5 bottom; is that right?

6 A. That's correct.

7 Q. But to be fair, this document has a date
8 at the top, 1/27/2016; is that right?

9 A. It does.

10 Q. And does this look to you like a copy of
11 the previous inventory list that was actually
12 signed, but this one was not signed?

13 A. Can I look at the other one again real
14 quick?

15 Q. Sure thing.

16 A. Yes, sir, it does look like the same --

17 Q. Okay. I'm going to go back to that next
18 page, which is Bates 28648. The policy doesn't say
19 anywhere in the property policy that there should be
20 a form filled out, outside of the inmate's presence
21 and kept in the property file unsigned, does it?

22 A. It does not.

23 Q. And I'm going to go to the next page. Is
24 this a purchase request, from what we've heard it
25 referred to as the canteen, or where inmates get

1 their property?

2 A. Yes, sir.

3 Q. And this form doesn't have a date on it
4 anywhere, does it?

5 Let me re-ask that question: It's not
6 signed or doesn't purport to say when this form was
7 filled out, does it?

8 A. It does not, that's correct.

9 Q. To be fair, there is a date on the form
10 where it says, "Forms need to be submitted to Level
11 5 property officer no later than June 14, 2013;"
12 isn't that right?

13 A. That's correct.

14 Q. And if you know, do you know whether
15 inmates are provided receipts when they purchase
16 items from the Level 5 store?

17 A. Sitting here today, I couldn't tell you
18 that.

19 Q. And there was nothing in the property
20 policy we just saw about keeping receipts in the
21 property inventory file, was there?

22 A. That's correct.

23 Q. And then I'm going to skip ahead two pages
24 to Bates No. 28651. Is this a Penitentiary of New
25 Mexico property inventory list for Reynaldo

1 Enriquez?

2 A. Yes, it is.

3 Q. And it looks like his signature at the
4 bottom, next to his signature line, it says
5 5/26/2011; is that right?

6 A. That's correct.

7 Q. Okay. And it looks like under there,
8 there is a signature next to where it says
9 "Inventory officer's signature" and a corresponding
10 date of 5/26/11; is that right?

11 A. That's correct.

12 Q. And so -- I'm having trouble recalling,
13 but as far as I remember, this is the first property
14 inventory form that we've looked at that has two
15 signatures on it; is that your recollection so far?

16 A. I don't recall any others with two, other
17 than this one, without going back through all the
18 documents.

19 Q. Sure. And in this property inventory
20 form, every single one of the blanks next to the
21 items listed has some mark next to it, doesn't it?

22 A. Yes.

23 Q. And I want to focus in on the left side
24 bottom portion of this form, under "Miscellaneous
25 items." Under "Miscellaneous items" there, it looks

1 to me like next to letters it has "10," but then
2 also the number "6;" is that right?

3 A. That's correct.

4 Q. And then, to be fair, right across from
5 that, next to what's marked "Legal letters," it says
6 "6?"

7 A. That's correct.

8 Q. All right. We can zoom out of that.

9 Down there under "Reading books," next to
10 where I just marked in red, if you can read that,
11 does that say, "zero?"

12 A. Are you talking about zero writing
13 tablets, or zero -- where are you pointing?

14 Q. Zero reading books, just to the right of
15 where I marked with red.

16 A. Yes, it says zero reading books.

17 Q. And the right side portion there it says
18 one dictionary; is that right?

19 A. That's correct.

20 Q. Now, I want to focus over to the items not
21 listed. And at the bottom of that, can you zoom in
22 on that? That's probably going to help us.

23 "Items not listed." Now, down to the
24 bottom, here, I'm looking at the -- sort of the last
25 two lines there, it says -- it looks to me, and tell

1 me if you disagree, it looks like it says "One
2 Federal Civil Judicial Procedure and Rules book," do
3 you see that?

4 A. I do.

5 Q. And then right after that it says, "Three
6 miscellaneous folders?"

7 A. Yes, it does.

8 Q. And if we can zoom out, please.

9 Under "Miscellaneous Items" where the
10 boxes are checked, where there's blanks to fill out,
11 it looks like there is a "zero" next to "Folders";
12 is that right?

13 A. Let me find the word "Folders."

14 Q. Sure. It's sort of hard to read.

15 A. Yes, it says zero folders.

16 Q. And the property -- the property policy
17 doesn't say anything about defining folders versus
18 miscellaneous folders, does it?

19 A. It does not.

20 Q. And again, we talked about this earlier,
21 but it doesn't define legal folders, either, does
22 it?

23 A. No, it doesn't.

24 Q. All right. I'm going to skip ahead a
25 couple of pages to 28656, Bates No. 28656, and this

1 looks to me like a Penitentiary of New Mexico
2 Personal Property and Disposition Inventory Sheet.
3 Is that what that says at the top?

4 A. Yes, sir.

5 Q. And under the policy that we read, was
6 there any form called a Penitentiary of New Mexico
7 Personal Property and Disposition Inventory Sheet?

8 A. No.

9 Q. And this is -- at the bottom, this says --
10 it's got a signature next to where it says
11 "Inventory officer." Do you see that?

12 A. Yes, I do.

13 Q. And the date there is September 15, 2011?

14 A. That's correct.

15 Q. And now, I want to take you back to what
16 we just saw at 28651. 28651, the property list we
17 just went over was marked May of 2011. At least
18 that's what's filled in next to the date, there. Do
19 you see that?

20 A. I do.

21 Q. So now, if we go back to 28656, this is
22 approximately -- about four months later; is that
23 right?

24 A. Yes, sir.

25 Q. So when we're talking about -- up at the

1 top, here, it looks like to me, at least, that this
2 is saying certain items were sent to storage. Do
3 you see that under where it says "Disposition of
4 property"?

5 A. Yes.

6 Q. Then I want to focus here on the left
7 portion of that. Do you see where it says, "Seven
8 manila envelopes and two folders"?

9 A. I do see that, yes.

10 Q. And if we go back to Bates 28651, the last
11 property inventory sheet, please, of the inventory
12 form. Again, we just looked at -- under
13 "Miscellaneous items," there were no folders
14 indicated; right?

15 A. That's correct.

16 Q. But under "Items not listed," to be fair,
17 there were three miscellaneous folders; is that
18 right?

19 A. Yes.

20 Q. It doesn't say "Manila envelopes there,"
21 does it?

22 A. It does not.

23 Q. But it does say, "Six legal letters." We
24 went over that.

25 A. Yes, sir.

1 Q. Do you know if those are the seven manila
2 envelopes that were sent to storage?

3 A. I don't know that.

4 Q. And if we go back now to 28656, this
5 actually does say that three legal letters were sent
6 to storage, right?

7 A. Yes, it does.

8 Q. This also says -- this also says that
9 there were two reading books, or at least two books
10 sent to storage; is that right?

11 A. That's correct.

12 Q. And the property inventory form said that
13 there were no reading books. Do you remember that,
14 from five months before?

15 A. Can you show it to me again, please?

16 Q. Sure thing. Of course, Bates No. 28651.
17 Right there next to where I've marked, and I'll take
18 off the mark so you can read a little bit better.

19 A. That's correct.

20 Q. But to be fair, again, we talked about
21 there was one Federal Civil Judicial Procedure and
22 Rules book under items not listed?

23 A. That's correct.

24 Q. Now, skipping ahead, back to 28656. Do
25 you agree with me that two books is more than one

1 book?

2 A. Yes, I do.

3 Q. And I want to skip two pages ahead. This
4 is the next day, 9/16/11, and we'll sort of short
5 circuit this. But again, this is a personal
6 property and disposition inventory sheet that was
7 not found in the policy for the New Mexico
8 Corrections Department; isn't that right?

9 A. It's not the form that the policy wants
10 the people to use, that's correct.

11 Q. Fair enough. And it looks like this is
12 saying the disposition of property for destroyed
13 items and items taken into the unit; is that right?

14 A. That's correct.

15 Q. And you said the policy that we looked at
16 for New Mexico Corrections Department, there wasn't
17 anything that said a personal property and
18 disposition inventory sheet should be filled out and
19 kept in the file -- or kept in the file listing
20 everything that was -- well, that's a bad question.
21 Let's just go ahead and keep moving along here. I
22 don't want to waste everybody's time.

23 Let's go to the very next page. On this
24 next page, the first line item there, again this is
25 September 21 of 2011; is that right?

1 A. Well, at the bottom it says September 21,
2 and at the top it says September 20.

3 Q. Thank you. That's a much better way to
4 read this form. And the top -- the top entry
5 there -- so this is still just about four months
6 after the last property inventory form that we saw;
7 isn't that right?

8 A. That's correct.

9 Q. And the top entry there says "Six manila
10 envelopes with legal work"; am I reading that right?

11 A. Yes, sir.

12 Q. And if we go back to Bates 28651. It
13 looks like on this form, again -- this form that was
14 filled out says that there were six legal letters?

15 A. Yes, I do see that.

16 Q. Okay. But again, this form says that
17 there were zero folders taken in there; is that
18 right?

19 A. That's correct.

20 Q. And it says under "Items not listed,"
21 again three miscellaneous folders, too; right?

22 A. That's correct.

23 Q. And so now going back to Bates No. 28659,
24 do we know where on that property inventory form we
25 just looked at, those six manila envelopes with

1 legal work was reflected? Do you know?

2 A. I do not know.

3 Q. I want to go ahead a couple pages to Bates
4 28661. This is another property inventory list; is
5 that right?

6 A. Yes, it is.

7 Q. And on this property inventory list, it
8 looks like next to the inmate's signature, the date
9 is 10/11/2011. Do you see that?

10 A. I do. Yes, it is.

11 Q. And to be fair, it's a little bit hard to
12 read, but it looks like it was signed by someone in
13 the officer's signature block on the same day. Do
14 you see that?

15 A. I do. And I agree that it looks like it's
16 on the same day.

17 Q. And on this form, there is, under "Legal
18 letters," it says here, "Miscellaneous items, five
19 legal letters folders." Do you see that?

20 A. Yes, it does say that.

21 Q. Okay. And again, under the property
22 policy, we didn't see any definition of legal
23 letters or legal folders, did we?

24 A. We did not.

25 Q. Do you know if those five legal letter

1 folders are five of the six manila envelopes that we
2 saw on that last disposition sheet?

3 A. I don't know that.

4 Q. And even if they were, there were six
5 there, and there is five here; is that right?

6 A. That's correct.

7 Q. On this property inventory sheet, do you
8 see any marks for Mr. Enriquez having in his
9 property at this time, in October of 2011, a
10 dictionary or books?

11 A. Give me a second to read it, please.

12 Q. Sure.

13 A. I don't see any listings for those.

14 Q. I don't either. And I will take you --
15 Well, let's go ahead and look at the next page. The
16 date on the top of this personal property and
17 disposition inventory sheet says 10/31, at least for
18 the month and date. Do you see that?

19 A. Yes.

20 Q. And it's a little hard to make out the
21 year, but at least the bottom portion next to the
22 inmate's and property officer's signatures both
23 reflect November 1 of 2011?

24 A. That's correct.

25 Q. So maybe that top date -- would you agree

1 with me that top date is probably October 31 of
2 2011?

3 A. That's what it appears to be, yes.

4 Q. And "Taken into unit" here, it looks like
5 the unit at the top -- it looks like the unit that
6 this purports to be taken into is Housing Unit 1-A,
7 room A-107; is that correct?

8 A. That's correct.

9 Q. It looks like this form says that taken
10 into the unit at that time was a manila envelope --
11 and I'm reading a couple of these -- at least one
12 manila envelope; right?

13 A. I see one, yes.

14 Q. It says one manila envelope, and then it
15 says two folders. Do you see that?

16 A. I do, and it does say that.

17 Q. And if we switch back to right before it,
18 the page right before it, the property inventory
19 list, that was October 11 of 2011. So we just
20 looked at a form from November 11, 2011 (sic).

21 And again, this says -- sorry, that's
22 fine. Don't worry about it. We can come back if we
23 need it.

24 That inventory form said the same room, so
25 if we go into the next property inventory form on

1 the following page, 28663, now we've got -- this
2 date is at the top and next to the two signatures is
3 November 10, 2011. Do you see that?

4 A. I do.

5 Q. So this is a couple of days after the
6 November 1, 2011, document we saw, right?

7 A. It is.

8 Q. And down here, as we scroll to two blocks
9 up from the bottom, it says that taken into the unit
10 was a dictionary and two books; is that right?

11 A. That's correct.

12 Q. Okay. And if we scroll back two pages to
13 the inventory for A-107 in October of 2011, again,
14 you and I went over this, there were no dictionaries
15 or reading books reflected on this property
16 inventory sheet; is that right?

17 A. That's correct.

18 MS. JACKS: Objection, Your Honor. That
19 actually misstates the evidence. On the bottom
20 right are books listed.

21 THE COURT: Well, I'll let you work with
22 that on redirect. Overruled.

23 BY MR. BECK:

24 Q. All right. So now as we -- and, I mean,
25 that's a good point. To be fair, down here at the

1 bottom it does look like there were three books. Do
2 you see that?

3 A. I do see it now, yes.

4 Q. Okay. So I guess, wouldn't you expect
5 books entitled, "Knife of Dreams," "Crossroads "--
6 looks like "Twilight" and "Katherine Storm" to be
7 reading books?

8 A. I would -- that's what they look like to
9 me, yes.

10 Q. Me too. All right. Now, let's go forward
11 just a couple of pages to 28663. Sorry, I should
12 have been a little bit more precise.

13 And again, here there's only two books
14 reflected as taken into the unit; is that right?

15 A. That's correct.

16 Q. And there is a dictionary, but on that
17 property inventory form, there were no dictionaries
18 right?

19 A. That's correct.

20 Q. And then, finally with this exhibit -- and
21 then we'll go ahead and move on to speed things
22 along. I want to look at Bates 28667.

23 This is another Penitentiary of New Mexico
24 property inventory list, right?

25 A. Yes, sir.

1 Q. And at the bottom, here, there's
2 signatures next to the inmate's signature and the
3 inventory officer's signature; is that right?

4 A. That's right.

5 Q. And it's dated May 1 of 2012?

6 A. Yes.

7 Q. But then again, at the top we see a
8 date -- or at least a mark indication that says 5/2.
9 Do you see that?

10 A. Yes.

11 Q. And down here under "Miscellaneous items,"
12 we've got "10 letters." Do you see that?

13 A. Yes.

14 Q. Next to that, where the form, at least,
15 says "Legal letters," it looks like letters has been
16 marked out and replaced with "Books." Do you see
17 that?

18 A. Yes. It looks like it says one legal
19 book, or books.

20 Q. And the property policy doesn't define
21 legal letters and legal books; right?

22 A. That's correct.

23 Q. And it looks like under "Items not listed"
24 there on the right, it says, "10 large envelopes."
25 Do you see that?

1 A. Yes, I see that.

2 Q. But it doesn't say manila envelopes?

3 A. It does not.

4 Q. Doesn't say legal envelopes?

5 A. It does not.

6 Q. And we've only got two folders on that
7 form, right?

8 A. That's right.

9 Q. And the legal book, do you remember
10 earlier, in May of 2011, that his property inventory
11 form said that there was a Federal Rules of Civil
12 Procedure rule book?

13 A. I do remember that, yes.

14 Q. Okay. And to you, is that a legal book?

15 A. Yes, it is.

16 Q. All right. And then as we just saw, as
17 Ms. Jacks pointed out fairly, there were three books
18 listed on the last property inventory form we saw;
19 right?

20 A. Yes.

21 Q. But then on the disposition form that we
22 saw, there were only two books; is that right?

23 A. That's correct.

24 Q. And the three books that we saw on the one
25 before that, there wasn't any legal book listed, was

1 there?

2 A. They did not appear to be legal books.

3 Q. And you didn't see the Civil Procedure
4 manual listed there?

5 A. It was not listed there, no.

6 Q. All right. So I'm going to go ahead and
7 move on.

8 MR. BECK: And I will move to admit -- the
9 United States moves to admit Government's Exhibit
10 778.

11 THE COURT: Any objection?

12 MS. JACKS: No, Your Honor.

13 THE COURT: Anyone else have any
14 objection? Not seeing or hearing any, Government's
15 Exhibit 778 will be admitted into evidence.

16 (Government Exhibit 778 admitted.)

17 BY MR. BECK:

18 Q. And before I show you that again, we
19 talked about this earlier, but your office responded
20 with one property inventory file for Reynaldo
21 Enriquez; right?

22 A. Yes.

23 Q. And you're the records custodian for New
24 Mexico Corrections Department, we went over that?

25 A. I am, for purposes of responding to public

1 records requests, yes.

2 Q. When you get those records request, then
3 you send them out to your people in the Corrections
4 Department to follow-up on those requests; right?

5 A. That's correct.

6 Q. And then the people for these requests
7 sent out a request for responsive documents to all
8 of the New Mexico Corrections Department facilities;
9 is that right?

10 A. I believe that I sent them to the Southern
11 facility and the Penitentiary of New Mexico, because
12 I think the public records request was focused on
13 that particular transfer.

14 Q. Fair enough. And we just saw that the one
15 file you got back on Reynaldo Enriquez was from the
16 Penitentiary of New Mexico?

17 A. That's correct.

18 Q. I'm going to show you what's now been
19 admitted as Government's Exhibit 778. This is a --
20 what is this document?

21 A. It's a document entitled at the top
22 "Southern New Mexico Correctional Facility Property
23 Inventory List."

24 Q. And there is no Bates number at the bottom
25 of this document; is that right?

1 A. That's correct.

2 Q. But there was on the file that you
3 provided to our office. You saw that?

4 A. I did see that.

5 Q. And in the documents that you provided to
6 our office, there was no Southern New Mexico
7 Correctional Facility Property Inventory List, was
8 there?

9 A. I don't recall seeing that, no.

10 Q. Okay. Now, on the bottom of this form,
11 March 7, 2014, is the date signed next to a
12 signature in the inventory officer's signature list;
13 is that right?

14 A. That's correct.

15 Q. And the IPRA request that was requested of
16 your office was for on or about March 6 of 2014;
17 right?

18 A. That's correct.

19 Q. And I think Ms. Jacks went over this with
20 you yesterday, late in the day, but there were
21 documents in here from 2016, right, in the document
22 that you provided?

23 A. Yes.

24 Q. And we just saw in the other file that
25 there were documents from as early as 2011?

1 A. That's correct.

2 Q. So in your opinion, is this document
3 responsive to the IPRA request?

4 A. The one that we're showing right now, this
5 page 3/7/14 should --

6 Q. Right.

7 A. This one does appear to be responsive,
8 yes.

9 Q. I want to go to the next page in there.
10 This is another part of this Government's Exhibit
11 778. This is another Southern New Mexico
12 Correctional Facility Property Inventory List for
13 Reynaldo Enriquez; right?

14 A. Yes, sir.

15 Q. And this one is dated March 13, 2014;
16 right?

17 A. That's correct.

18 Q. But again, this page isn't Bates stamped,
19 is it?

20 A. It is not.

21 Q. And to be fair -- well, let me ask you
22 this question first: In March of 2014, was Southern
23 New Mexico Correctional Facility operating under a
24 different policy for property inventory than the New
25 Mexico Corrections Department property inventory --

1 property policy that we saw yesterday?

2 A. It was my understanding that they were not
3 operating under a different policy.

4 Q. So in March of 2014, and specifically on
5 March 13 of 2014, they were taking a property
6 inventory list when someone is transferred. Should
7 it have been done on the New Mexico Corrections
8 Department property inventory form that we've looked
9 at a couple of times?

10 A. It should have been, yes.

11 Q. Now, I want to go back to that first page.
12 There is no signature here for the inmate; is that
13 correct?

14 A. That's correct.

15 Q. Under the policy, there should have been;
16 right?

17 A. That's correct.

18 Q. And I want to focus in under
19 "Miscellaneous items" here. It looks like -- next
20 to "Legal letters," instead of marking a number of
21 legal letters, it looks like whoever filled out this
22 form wrote in "Paperwork"; is that right?

23 A. Yes, that's what it looks like to me.

24 Q. And there were also nine folders. Do you
25 see that?

1 A. Yes.

2 Q. And 20-plus letters?

3 A. I see that as well, yes.

4 Q. And "Items not listed" there on the right
5 column of this document. Do you see there where it
6 says "Miscellaneous paperwork"?

7 A. Yes, I do see that.

8 Q. Do you know what miscellaneous paperwork
9 is?

10 A. I do not know.

11 Q. So if we zoom out of here, and let's go
12 back to what's been admitted as Government's Exhibit
13 774.

14 And this is the offender location history
15 for Reynaldo Enriquez. You probably already know
16 this, but just to help you out here, was Reynaldo
17 Enriquez transferred on March 6 of 2014?

18 A. It does appear he was from this form, yes.

19 Q. He was transferred from PNM up in Santa Fe
20 to Southern New Mexico Correctional Facility; right?

21 A. Yes.

22 Q. And do you remember -- you may not -- do
23 you remember in the transport forms that I think
24 Ms. Jacks went over with you briefly at the
25 beginning of yesterday, do you remember that his

1 name was on there next to Mauricio Varela and Lupe
2 Urquizo as being transferred from PNM to the
3 Southern New Mexico Correctional Facility?

4 A. That's correct.

5 Q. Now, I'm going to go back to what's been
6 admitted as Government's Exhibit 778, the first
7 page. And if Reynaldo Enriquez was transferred on
8 March 6 of 2014, would March 7 at 2014 at Southern
9 New Mexico Correctional Facility, would that have
10 been an inventory the day after he arrived?

11 A. Yes, sir.

12 Q. Okay. And let's go to the next page of
13 that document. On this property inventory list from
14 March 13, 2014 -- well, March 13 of 2014, that's --
15 I guess six days after March 6 -- or March 7 --
16 excuse me, six days after March 7, 2014; right?

17 A. That's correct.

18 Q. And six days after that last property
19 inventory form we saw, how many legal letters are
20 indicated on this property inventory form?

21 A. There are none. That is left blank there.

22 Q. And how much legal paperwork is indicated
23 on this property inventory form?

24 A. Give me just a second to read it to make
25 sure I don't see any.

1 Q. Sure.

2 A. I don't see any listings for that.

3 Q. So there is no legal paperwork listed
4 here, right?

5 A. That's correct.

6 Q. Okay. And there is no miscellaneous
7 paperwork listed here, on this property inventory
8 form, for six days after the last one, is there?

9 A. I don't see any, no.

10 Q. And six days after the last property
11 inventory form, this form indicates that there were
12 six folders; is that right?

13 A. That's correct.

14 Q. And if we go back to the last page we
15 looked at, March 7, how many folders were in his
16 miscellaneous items on March 7?

17 A. Looks like there were nine.

18 Q. And I'm going to go ahead two pages, now,
19 to the property inventory list that was listed.
20 Yes, thank you.

21 So this is another Southern New Mexico
22 Correctional Facility property inventory list; is
23 that right?

24 A. That's correct.

25 Q. And this one -- at least the dates next to

1 the signature say January of 2016; is that right?

2 A. Yes.

3 Q. And January 2016 at the Southern New
4 Mexico Correctional Facility, they should have still
5 been using -- under the policy, the New Mexico
6 Corrections Department property inventory list;
7 right?

8 A. That's correct.

9 Q. Okay. Now, it looks like here in 2016, if
10 we focus on the items not listed there, I'm not sure
11 zooming in will help us. I can't read that
12 handwriting, but it looks to me like it says, maybe,
13 "Miscellaneous paperwork;" do you see that?

14 A. Yes. It's hard for me to read, but it
15 does appear to say miscellaneous paper something.

16 Q. But to be fair, that's my interpretation
17 of it. I don't know if it's yours, because I can't
18 read that.

19 A. Could we maybe blow it up so I can look at
20 it a little closer?

21 Q. Sure. And I just don't want to be unfair
22 to you. If you think it says something different,
23 you can tell me.

24 A. I can't tell you exactly what it says.

25 Q. Okay. Fair enough. Thank you. And then

1 on the "Miscellaneous items," if we zoom in on that,
2 please, it looks like here we've got four
3 dictionaries; do you see that?

4 A. Yes.

5 Q. And four folders; do you see that?

6 A. Yes, four folders.

7 Q. 20-plus letters; do you see that?

8 A. I do, yes.

9 Q. And then if we back out to the regular
10 page. Up at the top, under "Personal clothing," it
11 looks like Mr. Enriquez had two pairs of tennis
12 shoes. Do you see that?

13 A. I do, yes.

14 Q. And I can't read what they are, but it
15 looks like maybe a Nike shoe and something else.
16 But it looks like there are two different shoes
17 listed there. Do you see that?

18 A. Yes.

19 Q. And I guess -- we talked about this
20 earlier, but if, indeed, this does say
21 "Miscellaneous paperwork," a property officer isn't
22 allowed to look through what's marked "Legal
23 paperwork," other than to just briefly look at it;
24 right?

25 A. He would be able to look at it if he

1 thought there might be contraband in it; otherwise,
2 no.

3 Q. Fair enough. And so this is dated January
4 26, 2016. And if we could go back to Government --
5 before we do that, sorry, it looks like at the top
6 of this form again there is a "Transferred from" and
7 a "Transferred to" column there. Do you see that?

8 A. Yes.

9 Q. And there is nothing in the "Transferred
10 from" blank. In the "to" blank, there is a question
11 mark; right?

12 A. Yes, there is.

13 Q. And if we go to Government's Exhibit 774.
14 On January 26, 2016, that was right before Reynaldo
15 Enriquez was transferred to PNM on January 27 of
16 2016; is that right?

17 A. Yes, he was transferred there on January
18 27 of 2016.

19 Q. Now, if we go to Government's Exhibit 773,
20 Bates No. 28647. So this property inventory list --
21 again, we went over this, but just to remind
22 ourselves, this is dated January 28 of 2016; right?

23 A. That's correct.

24 Q. And this is the form you gave me from the
25 Penitentiary of New Mexico; right?

1 A. Yes, sir.

2 Q. On this form -- let's just start at the
3 top. How many pairs of tennis shoes did
4 Mr. Enriquez have with him, according to this form?

5 A. It says one.

6 Q. And do you remember that two days earlier,
7 he had two?

8 A. Yes, I do.

9 Q. And then we'll focus in on "Miscellaneous
10 items." And Ms. Standridge, will you go ahead and
11 just switch over to the -- to the Elmo.

12 I don't want to test your memory here --
13 and forgive all my color coding, but we were just
14 looking at the property inventory list from PNM on
15 January 28 of 2016. Do you remember that?

16 A. I do.

17 Q. And other than my color coding and
18 highlights and writing on this document, this is the
19 exact same document we were looking at in
20 Government's Exhibit 773; right?

21 A. That's correct.

22 Q. And right before that, just a couple
23 minutes ago, I showed you Government's Exhibit 778,
24 which was the Southern New Mexico Correctional
25 Facility property files for Reynaldo Enriquez. Do

1 you remember that?

2 A. Yes.

3 Q. And this one wasn't Bates stamped, but do
4 you remember that we looked at January 26 of 2016?

5 A. Yes.

6 Q. And so here, on January 28 of 2016, it
7 looks like this indicates that there were two
8 folders?

9 A. Yes.

10 Q. And there were no legal letters?

11 A. That's correct.

12 Q. And there were two dictionaries; right?

13 A. Yes, sir.

14 Q. And now here, on this form -- I'm showing
15 you the form from Government's Exhibit 778, dated
16 1/26/2016, under "Miscellaneous items" here, there's
17 one legal letter; right?

18 A. Yes.

19 Q. There's four dictionaries?

20 A. Yes.

21 Q. And there's four folders. Do you see
22 that?

23 A. That's correct.

24 Q. So is it fair to say that these two
25 property inventory forms taken at the arriving and

1 receiving facility are different from one another;
2 right?

3 A. Yes, they are different.

4 Q. In all of the materials that you provided
5 in response to the IPRA request, do you remember
6 ever seeing a property inventory form filled out
7 from the receiving institution the day before -- or
8 the day -- or the day the inmate was transferred,
9 and a corresponding property inventory form at the
10 receiving institution the day of the transfer or the
11 day after the transfer?

12 A. I don't recall any of that.

13 Q. Okay. I don't either. These two -- and
14 again, as we talked about for Government's Exhibit
15 778, you didn't provide that in response to the IPRA
16 request; right?

17 A. I don't believe I did, no.

18 Q. And so now, in preparing for this -- and
19 in preparing for your testimony here, and in
20 testifying here, is it fair to say these are the
21 only two property inventory lists that you saw in
22 connection with your testimony here that corresponds
23 to the sending facility and the arriving facility?

24 A. That's -- that's a fair statement.

25 Q. And they weren't -- they didn't correspond

1 with one another in terms of the items listed in
2 there, did they?

3 A. They did not.

4 Q. All right.

5 MR. BECK: The United States moves to
6 admit Government's Exhibit 779, which I went over
7 with Mr. Brewster yesterday. It's Lupe Urquizo's
8 property file that Mr. Brewster provided to us -- or
9 provided to us and Ms. Jacks per her IPRA request.

10 THE COURT: Any objection?

11 MS. JACKS: I haven't been provided a copy
12 of the exhibit, so I want to see it.

13 No objection.

14 THE COURT: Any objection from any other
15 defendants? Not seeing or hearing any, Government's
16 Exhibit 779 will be admitted into evidence.

17 (Government Exhibit 779 admitted.)

18 BY MR. BECK:

19 Q. Now, Mr. Brewster, we went over these
20 yesterday. This is the property inventory file that
21 you provided in response to Ms. Jacks' IPRA request
22 for Lupe Urquizo's property file. Do you remember
23 that?

24 A. I do, yes.

25 Q. And in response to Ms. Jacks' IPRA

1 request, you provided one property inventory for
2 Lupe Urquizo; right?

3 A. I believe that's correct, yes.

4 Q. And it was this property inventory file?

5 A. Yes, sir.

6 Q. Now, this first page here, this is a
7 Penitentiary of New Mexico property inventory list;
8 right?

9 A. Yes.

10 Q. I think you went over this yesterday, but
11 just so we can remember, there is no signature from
12 either the inmate or the property officer on the
13 bottom of this form; right?

14 A. That's correct.

15 Q. On the top there is some date that says
16 1/28/2016?

17 A. That's correct.

18 Q. And on this property inventory list, it
19 looks to me like there is only one item listed. Do
20 you see that?

21 A. Yes.

22 Q. And that's a One Gen keyboard; right?

23 A. That's correct.

24 Q. Okay. I'm going to show you now what's
25 been admitted as Government's Exhibit 748. And this

1 will be the offender physical location history for
2 Lupe Urquizo. And if we look at January 28, 2016 --
3 or if we look at where he was at the time of January
4 28, 2016, Mr. Urquizo was not transferred from one
5 facility to another within two or three days of
6 January 28 of 2016, was he?

7 A. I'm still looking for the date. Give me
8 just a second.

9 Q. Sure. I'll direct your attention with my
10 little half moon red mark up here.

11 A. Okay. I don't see a 1/28/16 date.

12 Q. Okay. I don't either. And to be fair,
13 from December 10 of 2015, until February 2, 2016, he
14 was at PNM South Housing Unit 1-B, cell E102; right?

15 A. That's right.

16 Q. And January 28, 2016, falls within that
17 date range; right?

18 A. That's correct.

19 Q. Now, let's go back to Exhibit 779. And I
20 don't want to mislead you, I want to be fair. It
21 looks to me -- and tell me if you disagree with
22 this, but it looks to me like maybe this is some
23 kind of -- just form showing that at or around this
24 time, maybe Lupe Urquizo got a One Gen keyboard.
25 Does that seem fair?

1 A. That seems fair.

2 Q. Okay. But you don't know that?

3 A. I don't know that for sure.

4 Q. And the policy doesn't say that you can
5 use the Penitentiary of New Mexico property
6 inventory list as a receipt for property, does it?

7 A. It does not.

8 Q. So if that's what this document is
9 showing, it's not under any New Mexico Corrections
10 Department policy; right?

11 A. That's correct.

12 THE COURT: Mr. Beck, would this be a good
13 time for us to take our morning break?

14 MR. BECK: Sure, Your Honor.

15 THE COURT: All right.

16 Let me remind the jurors of a few things
17 that are especially important. Until the trial is
18 completed, you're not to discuss the case with
19 anyone, whether it's members of your family, people
20 involved in the trial, or anyone else, and that
21 includes your fellow jurors. If anyone approaches
22 you and tries to discuss the trial with you, please
23 let me know about it immediately.

24 Also, you must not read or listen to any
25 news reports of the trial, and don't get on the

1 internet and do any research for the purposes of
2 this case. And, finally, remember that you must not
3 talk about anything with any person who is involved
4 in the trial, even if it doesn't have anything to do
5 with the trial.

6 If you need to speak to me, give a note to
7 one of the Court Security Officers or
8 Ms. Standridge. I am going to be repeating these a
9 little bit this week, but if I don't say anything
10 about them, keep them in mind each time we take a
11 break.

12 All right. We'll be in recess for about
13 15 minutes.

14 All rise.

15 (The jury left the courtroom.)

16 THE COURT: All right. We'll be in recess
17 for about 15 minutes.

18 (The Court stood in recess.)

19 THE COURT: All right. Let's go on the
20 record. This morning I received an email from Pedro
21 Galvan, and it says, "This morning Juror Cameron
22 William Johnston" -- he's Juror No. 14; remember we
23 skipped, and we let Ms. May go, so he's No. 14, the
24 fellow with the white hair and white beard -- "was
25 found in possession of a handgun as he was coming

1 into the courthouse. The CSOs observed a handgun in
2 the juror's backpack, and had him take it outside,
3 presumably to his vehicle, before he was allowed to
4 reenter the courthouse. Apologies for the late
5 notice. If the Judge has any questions, he can
6 direct them to JSI Layo," and gave me the telephone
7 number. And, of course, we were on the bench.
8 "Deputy Marshal Layo requests a break as soon as
9 possible to speak with me regarding Juror No. 14."

10 I did that during the break. And what I
11 understand is that it's standard policy for Federal
12 Police Services to be notified. And they have been
13 notified, and they'd like to speak to the juror and
14 look at the weapon.

15 What his explanation was, was that he is a
16 concealed carry gun owner. He forgot it was in his
17 pack. So my understanding is the gun is in the
18 vehicle. I think there was some other FPDs and
19 jurors around. So for the integrity of the process,
20 the marshals let him come on through, and after
21 he -- they sent him back to put the gun in the car.

22 So that's where we stand. I've given the
23 marshals what I think are the likely breaks, which
24 will be about 11:30, and then also probably we'll
25 take a late lunch, so about 1:15. It will take a

1 little bit of time for them to talk to him, but
2 Federal Police Services -- and to look at the gun,
3 and run a check on it, and those sort of things.

4 I really don't know anything else to do,
5 other than just let it play itself out. If somebody
6 has anything we can do, I could have Ms. Standridge
7 ask him not to speak to the other jurors about it,
8 if y'all would like me to. Other than that, it just
9 seems to me it needs to play out and the let the
10 Federal Police Services take care of it.

11 I'm going to have Ms. Standridge mark the
12 materials that were given to me as Exhibit V to her
13 Clerk's minutes. Anybody want Ms. Standridge just
14 to ask him not to speak to any of the jurors about
15 it? Or do you want to just let it play out? Does
16 the Government have any thoughts?

17 MR. BECK: No, Your Honor. The Government
18 doesn't have a position on that.

19 THE COURT: Defendants have any -- care?
20 Do you want Ms. Standridge to ask him not to speak
21 to anybody about it, or other jurors? Or do you
22 want to just let it play out?

23 MR. CASTELLANO: While they're conferring,
24 my recommendation would be to have Ms. Standridge
25 instruct him not to discuss it with any of the

1 jurors. And then let it play out. And we'll see
2 what the defense says.

3 THE COURT: Well, why don't we do at least
4 that much? And we'll just have Ms. Standridge just
5 tell him not to discuss this with any of the other
6 jurors, and I'll keep you posted as I learn stuff.

7 All right. Ms. Standridge will go ahead
8 and get the jury lined up.

9 Ms. Duncan, your memo that you sent
10 yesterday with your transcript, so the record is
11 clean, I'm going to mark that as Exhibit W to the
12 Clerk's minutes, so we'll get a clean transcript on
13 that, and get that marked.

14 While we're waiting, I'll give you a few
15 more comments on the jury instructions. I mentioned
16 Instruction Number 33 a minute ago, and that was not
17 the right number. Instruction Number 33 is y'all
18 all agreed to take out the definition of possession,
19 which was the Tenth Circuit definition.

20 As a result of this trial, the Tenth
21 Circuit has now published a new jury instruction.
22 We noticed that their updated ones on 2017 did not
23 include -- so the ones on the website did not
24 include an instruction on possession. So we
25 contacted them and they said, well, they've been

1 thinking about it a long time, so they issued one,
2 so they now have one if you look at the website.

3 What you have in your copy, and what I
4 sent back to be typed, that is new instruction from
5 the Tenth Circuit pattern jury instruction. If you
6 want it, that's fine. If you don't want it -- it
7 actually is very helpful to the defendants because
8 of a Tenth Circuit and a Supreme Court decision, so
9 this thing has been revised in favor of defendants
10 because of what -- instead of a multifaceted test
11 that the Tenth Circuit had with theirs, they now
12 have a fairly short one that requires both intent
13 and intent to control, so it tightens it up.

14 You will see that I made -- I'll say some,
15 but it may be a lot -- of the defendants' red
16 lining. Some I did not make because I did want to
17 get the Government's input. But you can see what I
18 went ahead and accepted. So rather than waiting for
19 the Government's input, I looked at some of the
20 defendants' suggestions. And it seemed to me that
21 some of them were good, and I agreed with them. So
22 I went ahead with them.

23 The cover sheet -- don't worry about the
24 cover sheet, if I can have your permission to just
25 leave it the way it is. The cover sheet does not go

1 to the jury, so the first thing they'll get is the
2 first instruction. But for CM/ECF purposes, it kind
3 of helps me link up if I just leave the caption on.
4 So if you can live with that, I'd appreciate it. It
5 just helps me get linked up on CM/ECF, but I'll make
6 sure that Ms. Standridge does not give them any jury
7 instructions with the full caption on it.

8 THE COURT: All rise.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Mr. Brewster, I'll
11 remind you that you're still under oath.

12 Mr. Beck, if you wish to continue your
13 cross-examination of Mr. Brewster you may do so at
14 this time.

15 MR. BECK: Thank you, Your Honor.

16 THE COURT: Mr. Beck.

17 BY MR. BECK:

18 Q. Mr. Brewster, when we left, I was showing
19 you Government's Exhibit 779, and the first page of
20 Lupe Urquizo's property file that you provided. I
21 want to go to the next page. This is a page that
22 Ms. Jacks went over with you yesterday evening.

23 Does this document appear to be a
24 Penitentiary of New Mexico personal property and
25 disposition inventory sheet? Do you see that?

1 A. Yes, I do.

2 Q. And at the bottom of the form, there is a
3 signature next to inmate signature, and a "G" next
4 to inventory property. Do you see that?

5 A. Yes.

6 Q. And down at the bottom, there is a
7 signature block for a signature for the Deputy
8 Warden of Administration. Do you see that?

9 A. Yes.

10 Q. All those dates are in 2015, right?

11 A. That's correct.

12 Q. Now, I'm going to go back to Defendants'
13 Exhibit W7 at Bates 53416. I think Ms. Jacks went
14 over this with you last night. Do you remember
15 going over this form?

16 A. Yes, a little bit. It's been a while now.

17 Q. That's all right. This is the form under
18 the New Mexico Corrections Department Property
19 Policy for Receipt for Confiscated Property; right?

20 A. Yes.

21 Q. Okay. And this is the form that the
22 policy required to be used for confiscated property
23 in 2014; right?

24 A. That's correct.

25 Q. And for PNM in 2015, this form should have

1 been used if you were giving an inmate a receipt for
2 confiscated property; right?

3 A. That's correct.

4 Q. Now, let's go back to Government's Exhibit
5 779, Bates No. 28609. So should this -- should the
6 Penitentiary of New Mexico, for confiscated
7 property, should they have used the New Mexico
8 Corrections Department Receipt for Confiscated
9 Property that we just looked at, in December of
10 2015?

11 A. They should have.

12 Q. Let's go ahead and go to the next page.
13 This form also is dated at the top, December 10,
14 2015; do you see that?

15 A. I do, yes.

16 Q. And it looks like in the right-side column
17 here, there is a list of items that, according to
18 this form, were taken into the unit. Do you see
19 that?

20 A. I do.

21 Q. I'm going to show you what's been admitted
22 as Government's Exhibit 748. And we're going to
23 look at December 10 of 2015. And so on December 10
24 of 2015, was Lupe Urquizo transferred from a
25 facility to a facility?

1 A. Yes. He was transferred to the
2 Penitentiary of New Mexico.

3 Q. Okay. And I think the jurors saw a -- saw
4 a picture of this earlier, but it looks like when it
5 says, "N3B to PNM," and then the line above says
6 "S1B." That indicates that he was transferred from
7 the North facility to the South facility of PNM;
8 right?

9 A. I believe that's correct.

10 Q. And if you know, have you ever visited the
11 North or South facility?

12 A. I visited the facility, yes.

13 Q. Okay. And just to remind the jury,
14 they're on the same compound of the Penitentiary of
15 New Mexico; right?

16 A. Yes, they are.

17 Q. And they're separated by a road that, I
18 guess, I would say is maybe a mile long. Do you
19 agree it's about a mile-long road that separates
20 them?

21 A. It may be a little shorter than that, but
22 it's -- they are separated physically, they're two
23 different units. And one is closer to the north and
24 one is closer to the south.

25 Q. Good. Now, I'm going to take you back to

1 Government's Exhibit 779 at Bates 28610. So it
2 looks like these were -- this document, I guess,
3 purports to show items that were taken into the
4 facility or taken into the unit on December 10 of
5 2015; would you agree with that?

6 A. That's correct.

7 Q. Under the property policy in place in
8 2015, did the property policy require an officer --
9 a property officer -- to list the items taken into
10 the unit on a personal property and disposition
11 inventory sheet?

12 A. I believe so.

13 Q. Okay. Let's go back for a minute to
14 Defendants' Exhibit W7. Or actually, I can just
15 show you a copy of this and refresh your
16 recollection.

17 Do you remember whether the policy in
18 place in 2015 required the property inventory --
19 the property officer to list out the property taken
20 into the unit on the personal property and
21 disposition inventory sheet?

22 A. I'm not sure what form the policy says to
23 put it on.

24 Q. All right. Would it refresh your memory
25 to look at the policy?

1 A. Yes.

2 Q. All right. I'm handing you Defendants'
3 Exhibit W7, and go ahead and look at paragraphs 3
4 through 6, there, that we went over earlier today.

5 And once your memory has been refreshed,
6 whether the property officer lists the property
7 taken into the unit by a personal property and
8 disposition inventory sheet. Just go ahead and look
9 up.

10 A. The policy indicates that it should be
11 completed on a form called the Property Inventory
12 List.

13 Q. And that's what we talked about earlier
14 today, right, that when they're transferred, they
15 list the property transferred on the property
16 inventory sheet; right?

17 A. That's right.

18 Q. And that's the New Mexico Corrections
19 property inventory sheet?

20 A. Yes.

21 Q. And if there is property they aren't
22 allowed to have that's confiscated, then that
23 property is listed on the receipt for confiscated
24 property.

25 A. That's correct.

1 Q. So when we go back to Exhibit 779, and I
2 think the third page of that Bates 28610, here. In
3 2015, does listing the items taken into the unit in
4 a column on this personal property and disposition
5 inventory sheet comply with that policy that you've
6 just read over?

7 A. It does not appear to, no.

8 Q. I'm going to go to the next -- the next
9 page in this, 28611. This is a property inventory
10 list from -- that at least has marked on it three
11 times, December 10 of 2015; right?

12 A. Yes.

13 Q. And as we saw earlier, that's the date
14 Lupe Urquizo was transferred from the North facility
15 to the South facility at PNM; right?

16 A. That's correct.

17 Q. And again, this is a property inventory
18 list under the policy at the time, they should have
19 used, under the policy, of the New Mexico
20 Corrections Department property inventory list;
21 right?

22 A. That's correct.

23 Q. So using this doesn't comply with New
24 Mexico Corrections Department policies at the time?

25 A. It does not.

1 Q. And if we go back to the last page, I want
2 to direct your attention to a couple of things here.
3 Do you see on the right side where it says, "18
4 pencils"?

5 A. Yes.

6 Q. Do you see where it says "four pens"?

7 A. Yes.

8 Q. Do you see where it says "one nail
9 clipper"?

10 A. I do see that.

11 Q. Actually, I just learned that we can do a
12 side-by-side here that will save us a little bit of
13 time and help both of us. The next page.

14 All right. So I'm showing you
15 Government's Exhibit 779. On the left side of that
16 is Bates No. 28610, which we just talked about a
17 moment ago, and then Bates No. 28611 on the next
18 page, which is the property inventory list we were
19 just discussing.

20 A. Yes.

21 Q. Now, it looks like on the sheet on the
22 left-hand side here, it says 18 pencils were taken
23 into the unit; right?

24 A. It does.

25 Q. On the form on the right, how many pencils

1 does it say were in the property inventory list on
2 December 10 of 2015?

3 A. I'm looking for any mention of pencils. I
4 haven't seen it yet. Give me a second please.

5 Q. Okay. I just circled "Miscellaneous
6 items" down there on Bates 28610.

7 A. There is no pencils listed on the second
8 form, the one on the right.

9 Q. All right. How many pens -- how many pens
10 are listed on the form on the right?

11 A. None.

12 Q. And how many pens are listed on the page
13 right before it, the form on the right at 28610?

14 A. Four pens.

15 Q. And how about nail clippers?

16 A. There is one on the left-side page.

17 Q. Are there any nail clippers on the right?
18 And I'll direct your attention to personal --

19 A. No, I can see that it's blank on the
20 right-hand form.

21 Q. And it looks like -- and I'm not going to
22 go over all these, but we'll just take a couple of
23 them. Do you see where it says "one remote Hiteker"
24 on the form on the left, at 28610?

25 A. Yes, I do see that.

1 Q. Okay. Do you see in the form on the
2 right, in the property inventory list, where it
3 indicates that Mr. Urquizo had any remote in his
4 property there?

5 A. I don't see any mention of it.

6 Q. Same thing with a hot pot. Do you see
7 where it says "hot pot" right above that, on the
8 form on the left?

9 A. Yes.

10 Q. And on the right, is there any hot pot
11 mentioned?

12 A. There is not.

13 Q. And an MP3 player, too, below that, where
14 it's mentioned on 28610?

15 A. I see it on the left-hand form, yes.

16 Q. Then on the right, does it indicate an MP3
17 player where it says "radio"?

18 A. It doesn't indicate anything.

19 Q. And an MP3 player isn't listed anywhere on
20 that property inventory list on the right; correct?

21 A. That's correct.

22 Q. And then -- I guess this one on the left
23 mentions that -- well, I don't know what I circled
24 there, but it wasn't what I was going for. It
25 mentions one tissue listed as taken into the unit;

1 right?

2 A. Yes.

3 Q. And the form on the right, the property
4 inventory list does say that there were tissues
5 taken into the unit; right?

6 A. I need a second to read it to look for
7 them.

8 Q. Sure. I'll circle items not listed there.

9 A. Yes, it says two rolls of tissue.

10 Q. And how many rolls of tissue or items of
11 tissue does the form on the left say?

12 A. It just says one tissue.

13 Q. And on both of these forms, since we're
14 looking at them now, do the signatures at the bottom
15 of those forms, next to inmate signature, look
16 identical to you?

17 A. They don't look identical, no.

18 Q. At the top left, where it says "Inmate's
19 name," and at the top left of the left form where it
20 says, "Name," do both of those actually say "Lupe
21 Urquizo"?

22 A. They do.

23 Q. Okay. Is it the same New Mexico
24 Corrections Department number on the top of both of
25 those forms?

1 A. Yes.

2 Q. And then at the bottom, next to "Inventory
3 officer" where it has a signature, which looks to me
4 like a "G," do both of those have the same "G"
5 signature?

6 A. The "G"s appear to be the same.

7 Q. But the signatures -- I think you said for
8 the inmates, at least, don't look like each other;
9 is that right?

10 A. They don't look identical, that's true.

11 Q. All right. So we see the TV Hiteker
12 remote on the form on the left. But we don't see it
13 on the property inventory list; right?

14 A. That's correct.

15 Q. And this is December 10, 2015, for both of
16 these forms; right?

17 A. That's correct.

18 Q. All right. I'm going to go to the next --
19 the next page in this property inventory -- or this
20 property file that you provided to us. So this
21 property inventory list from -- you've seen this
22 property inventory list before in this case; right?

23 A. Yes.

24 Q. This is the one that you talked about
25 yesterday, which was admitted as Defendants' Exhibit

1 U2 from March 6 of 2014; right?

2 A. I don't remember the exhibit number, but,
3 yes, that's the document.

4 Q. And March 6, 2014, this is about -- well,
5 I'm not great at math, but let's say 12 and 9, this
6 is about 21 months before the disposition inventory
7 sheet on the left there; right?

8 A. Yes.

9 Q. And this property inventory form actually
10 does say that there was Hiteker remote; right?

11 A. It does, yes.

12 Q. Do you see there is no MP3 player on this
13 list, though; right?

14 A. I don't see one.

15 Q. And I'm not going to go through it, but
16 it's fair to say that there is a lot more items
17 listed on the left as taken into the unit in 2015,
18 than there is on the right?

19 A. That's correct.

20 Q. And again, I think Ms. Jacks pointed this
21 out yesterday, and I don't want to be unfair, but
22 there is nothing indicated there, next to "Legal
23 letters," right, on Bates 28612, on March 6 of 2014?

24 A. That's correct, it's blank.

25 Q. I want to skip ahead a couple of pages

1 here -- I guess while we're looking at this page
2 from March 6, 2014, how many Bibles does it list in
3 his property there?

4 A. Are we looking at the form on the right?

5 Q. Yes, the form on the right, under
6 "Miscellaneous items," how many Bibles?

7 A. It's blank.

8 Q. Okay. And what about nail clippers, up
9 above, under "Personal hygienics"?

10 A. It's blank, as well.

11 Q. And if we can go back to one page, now,
12 and just go up on to the next page.

13 So this document -- the date on this
14 document, at the top right, says 6/19/2013; is that
15 right?

16 A. It does.

17 Q. And that's about nine months before March
18 6 of 2014; right?

19 A. Yes.

20 Q. And this indicates that taken into the
21 unit were a nail clipper. Do you see that?

22 A. I do.

23 Q. And a Bible. Do you see that?

24 A. Yes.

25 Q. And on the form we just looked at, his

1 inventory form, do you remember that neither a nail
2 clipper nor a Bible were reflected in his inventory
3 at that time?

4 A. I do agree there was no nail clipper, but
5 I don't recall a Bible. If I could look at the
6 first form.

7 Q. Sure thing. We'll go right back to the
8 last page. Do you see down there, under
9 "Miscellaneous items," how many Bibles?

10 A. No Bibles, it's blank.

11 Q. And there is -- it does indicate a
12 religious medal; right?

13 A. Yes, one religious medal.

14 Q. And I guess there at the bottom under
15 "Canteen items" here in Bates 28612, which is
16 Defendants' Exhibit U2, it says there was an open
17 pack of crackers; right?

18 A. Yes.

19 Q. Do you know that property officers are
20 supposed to search for contraband as they inventory
21 the items?

22 A. They are supposed to, yes.

23 Q. And do -- does contraband include homemade
24 knives or shanks?

25 A. It would, yes.

1 Q. And does that indicate that there was a
2 homemade knife or a shank inside of that open pack
3 of crackers?

4 A. No, it doesn't.

5 Q. So we'll go to the next page that we were
6 just looking at, with the Bible. Again, according
7 to the New Mexico Corrections Department policy for
8 property, are you supposed to use -- is an
9 individual in New Mexico Corrections Department
10 supposed to use this personal property and
11 disposition inventory sheet as a receipt for items
12 bought from the store and taken into the unit?

13 A. No.

14 Q. Go to the next page. Does this look to
15 you like a receipt from May of 2013? I'm not asking
16 for a specific date, just --

17 A. It does.

18 Q. And a couple times reflected on there at
19 the top, where it says, "Date," and it looks like
20 there is a stamp, "Paid," and those both reflect
21 that it was made in 2013; right?

22 A. Yes, they do.

23 Q. Okay. So we've seen a couple of times
24 where some of the forms show one or two items on a
25 certain New Mexico Corrections Department form.

1 Does this indicate to you that the New Mexico
2 Corrections Department also provides inmates with a
3 receipt when they purchase things from the store?

4 A. This form doesn't really tell me that.

5 Q. Okay. Maybe there at the bottom where it
6 says items received by inmate -- I know it doesn't
7 say received, but I guess maybe I'm saying that may
8 act as a receipt. And if you don't know, that's
9 fine.

10 A. I can't say here today whether or not it's
11 a receipt.

12 Q. And you can't say, because that
13 property -- that property policy that we looked at
14 doesn't say anything about keeping receipts in an
15 inmate's property file, does it?

16 A. That's correct.

17 Q. But again, this is the property file that
18 you provided to Ms. Jacks and to us in response to
19 the IPRA request?

20 A. Yes.

21 Q. So it is Mr. Urquizo's property file?

22 A. It is.

23 Q. Can we go to the next page?

24 Again, this is a personal property and
25 disposition sheet. Do you see that?

1 A. I do.

2 Q. It's got one item listed on it?

3 A. Yes.

4 Q. And then we'll go to the next page.

5 This is another personal property and
6 disposition inventory sheet. Do you see that?

7 A. I do, yes.

8 Q. And this has got four sort of columns of
9 items taken in -- into the unit?

10 A. Yes.

11 Q. And again, this sheet and the last sheet,
12 there is no provision in the property policy for
13 these sheets to be filled out; is that right?

14 A. That's correct.

15 Q. We'll go to the next page. Do you see
16 that this is another property and personal
17 disposition inventory sheet?

18 A. Yes.

19 Q. And do you see where -- under "Taken into
20 the unit," on this one it says "four legal letters."
21 Is that the first item?

22 A. I do, yes.

23 Q. And a Braun shaver as the second item?

24 A. Yes.

25 Q. And this was November of 2012; is that

1 right?

2 A. Yes.

3 Q. And sitting here today, can you tell by
4 looking at this form where it was filled out,
5 whether it was the North facility or the South
6 facility?

7 A. I couldn't tell you that, sitting here
8 today.

9 Q. Could you tell for sure whether it was
10 filled out at the Penitentiary of New Mexico, rather
11 than somewhere else?

12 A. I would assume it was filled out at the
13 Penitentiary of New Mexico since it said that on the
14 form, but I don't know.

15 Q. I would assume that, too. I'm asking
16 whether you can say for sure whether that's the
17 case.

18 A. No.

19 Q. But so -- and again, there is three dates
20 on this form, and they all, looks like to me, say
21 November 13 of 2012. Is that fair?

22 A. Yes.

23 Q. And that's about a year-and-a-half before
24 March 6 of 2014; right?

25 A. Correct.

1 Q. And if we go back to Defendants' Exhibit
2 U2, which is Bates 28612 in this document, it's five
3 pages before, where it says "Legal letters" on that
4 property inventory list, it doesn't have anything
5 marked for legal letters; right?

6 A. Give me a second to look here.

7 Q. Sure.

8 A. It's blank.

9 Q. Thank you.

10 And nowhere else on this -- on this form
11 does it indicate legal paperwork or miscellaneous
12 paperwork or, really, any paperwork whatsoever;
13 right?

14 A. It does not have any mention of any
15 paperwork.

16 Q. Because "Letters" is blank, also; is that
17 right?

18 A. That's correct.

19 Q. All right. And again, we already went
20 through this, but the page after this, in 2015,
21 or -- excuse me, the page after this, in 2013 -- oh,
22 sorry, I guess she went back to the other exhibit.

23 We're in Exhibit 779. Bates No. 28613.
24 This doesn't indicate that any legal letters or any
25 letters at all, in fact, were sent to storage, sent

1 home, or destroyed, does it?

2 A. That's correct.

3 Q. We'll go to the next page in this property
4 file. This is a receipt. Do you remember that, or
5 at least the purchase request?

6 A. Yes.

7 Q. And the next page in this property file,
8 the date at the top there is 1/31/2013?

9 A. That's correct.

10 Q. This indicates photos being taken into the
11 unit; right?

12 A. Yes, it lists photos being taken into the
13 unit.

14 Q. And it doesn't say that letters or legal
15 letters were stored, sent home, or destroyed, does
16 it?

17 A. That's correct.

18 Q. We'll go to the next page, and this is
19 from November, 2012, right?

20 A. Yes.

21 Q. That's when he took in the letters; is
22 that right?

23 A. Yes, four letters.

24 Q. According to this form, at least, we don't
25 know?

1 A. On the form, yes.

2 Q. This doesn't say that any letters or legal
3 letters were stored, sent home, or destroyed; right?

4 A. That's correct.

5 Q. And then we'll go to the next page, which
6 is the one we started at. This is the page in
7 November, 2012, that said he took into the unit with
8 him, four legal letters; right?

9 A. That's what it says, yes.

10 Q. And this form doesn't say that Lupe
11 Urquizo stored, sent home, or destroyed any of these
12 four legal letters; right?

13 A. Correct.

14 Q. And then we'll go to the next page. This
15 is a personal property and disposition inventory
16 sheet for November of 2012; right?

17 A. Yes.

18 Q. And on this one, it says that Mr. Urquizo
19 has a hot pot. Do you see that?

20 A. I do, yes.

21 Q. Do you remember seeing the hot pot listed
22 on the March 6, 2014, property inventory list?

23 A. I'd have to go and look at it, I'm sorry.

24 Q. But you don't remember that sitting here
25 right now?

1 A. I do not.

2 Q. And we can look at that in a minute, but
3 it looks like in the third entry down there -- or
4 maybe it's the second entry, or the third -- it is
5 the third, but it's on the fourth line, it says a
6 box of crackers; right.

7 A. Yes.

8 Q. And there was box of crackers listed on
9 that March 6 of 2014, property inventory list. Do
10 you remember that?

11 A. Yes.

12 Q. And then let's go to the next page. Is
13 this a property inventory and disposition inventory
14 sheet from October of 2012?

15 A. Yes.

16 Q. And on this property inventory sheet, does
17 it show that Mr. Urquizo took into the unit, in
18 2012, an MP3 adapter?

19 A. It does.

20 Q. So that he also took in an MP3 player?

21 A. Yes, it does.

22 Q. Does it show that he took into the unit,
23 ear buds?

24 A. Yes.

25 Q. Does it show he took in a Hiteker TV

1 remote?

2 A. He took something related to Hiteker TV.

3 I don't know what it was.

4 Q. And it looks to me like maybe he took in a
5 Hiteker TV?

6 A. Right.

7 Q. And do you know that the New Mexico
8 Corrections Department writes down the serial
9 numbers of certain property taken into the unit to
10 keep track of those valuable property items?

11 A. Yes.

12 Q. And then below it, under that Hiteker TV
13 number, it looks like that is a TV remote there;
14 right?

15 A. That's correct.

16 Q. Now, I want to go back to Bates No. 28610.
17 Do you remember this disposition inventory
18 sheet we talked about a moment ago from December of
19 2015?

20 A. Yes.

21 Q. And this says that at that time, he took
22 into the unit a hot pot. Do you see that?

23 A. Yes.

24 Q. A TV remote?

25 A. Yes.

1 Q. And that's a Hiteker TV remote?

2 A. That's what it says, yes.

3 Q. Does it say he took in a TV Hiteker at the
4 same time?

5 A. It doesn't list a TV.

6 Q. So I think two below where it says --

7 A. There it is, I'm sorry. I didn't see it.
8 TV Hiteker.

9 Q. And a digital antenna. Do you see that
10 below that?

11 A. Yes.

12 Q. And then if we go to the next -- excuse
13 me, if we go two pages forward, back to the March 6,
14 2014, this doesn't say that he took in a TV
15 remote -- or, excuse me, an actual TV, does it?

16 A. It's blank for a TV -- the TV line is
17 blank.

18 Q. And it doesn't indicate that he took in an
19 antenna, does it?

20 A. It does not.

21 Q. It doesn't indicate that he took in an MP3
22 adapter; right?

23 A. It does not indicate that.

24 Q. It doesn't indicate that he took in an MP3
25 player, does it?

1 A. No, it does not.

2 Q. All right. Now, if we can go to the page
3 we were about to go to before I jumped back here.

4 Bates No. 28620.

5 Now, this document, the date on this
6 document -- three times -- in the top right, at the
7 bottom next to the signatures, says that it was --
8 or at least states October 22 of 2012; right?

9 A. Correct.

10 Q. And this document is a New Mexico
11 Corrections Department Receipt for Confiscated
12 Property; right?

13 A. Correct.

14 Q. Do you remember looking at this form in
15 the actual New Mexico Corrections Department policy?

16 A. I do.

17 Q. So in 2012, it was correct, wasn't it, for
18 the property officer to use this New Mexico
19 Corrections Department Receipt for Confiscated
20 Property?

21 A. Yes.

22 Q. And so in 2012 -- 2012 is before 2014;
23 right?

24 A. It is.

25 Q. Before 2016; right?

1 A. It is.

2 Q. So in 2012, the New Mexico Corrections
3 Department, Penitentiary of New Mexico, or wherever
4 this property file is from, knew and had in their
5 possession -- knew about and had in their
6 possession, this correct New Mexico Corrections
7 Department form; is that right?

8 A. I would assume they did, because they used
9 it, and that's the policy, yes.

10 Q. Then can we go to the next page, please?
11 Does this document say that it's a
12 Penitentiary of New Mexico property inventory list
13 for Lupe Urquizo?

14 A. It does.

15 Q. And does it say at the bottom, next to the
16 signatures, 9/14/2012?

17 A. It does.

18 Q. And on this form, are there signatures
19 from both the property officer and the inmate?

20 A. There are.

21 Q. And in September 2012, that's a little
22 more than a year-and-a-half before March of 2014;
23 right?

24 A. That's correct.

25 Q. On this document, under "Items not

1 listed," does it include a law book?

2 A. Yes, it does.

3 Q. Did we see law book -- did you see law
4 book anywhere before this, on any of Mr. Urquizo's
5 property documents that we went through?

6 A. I did not.

7 Q. And that includes taken into the unit, or
8 disposed of, or sent home; right?

9 A. That's correct.

10 Q. On this document, does it say in "Items
11 confiscated" -- if we zoom in on that portion, it's
12 a little bit hard to read. Does it say that he had
13 confiscated from him two cassette tapes and two Sony
14 radios, broken?

15 A. Yes, it does.

16 Q. Do you remember -- if you remember -- do
17 you remember whether on the March 6 of 2014,
18 property inventory sheet, we saw that he took in --
19 or at least we saw on that sheet that there was
20 listed a Sony cassette and two cassette tapes?

21 A. Yes.

22 Q. And so up at the top of this document, it
23 says PNM 5 and PNM 6, one or the other, or at least
24 do you see where it says "PNM" then there's some
25 Roman numerals?

1 A. Yes.

2 Q. And do you know -- if you know -- that
3 inmates are allowed more property at a Level 5
4 facility than they are at a Level 6 facility?

5 A. That's generally true, yes.

6 Q. And are inmates allowed more property at a
7 Level 4 facility than they are allowed at a Level 5
8 facility?

9 A. Yes.

10 Q. And so that's how it works. As you go
11 down in levels, you have less restrictions, and
12 you're allowed more property?

13 A. And more privileges, yes.

14 Q. And so if items were confiscated at times,
15 you would expect -- it may be because this person is
16 being moved from a Level 5 to a Level 6. Would you
17 expect that?

18 A. Yes.

19 Q. And would you expect that someone would
20 take more property with them down to a Level 4
21 facility in Southern New Mexico Correctional
22 Facility, than they would take with them to a Level
23 6 or a Level 5 facility?

24 A. Yes, I would say that's generally true.

25 Q. Does this property inventory form --

1 property inventory list -- look like Mr. Urquizo had
2 significantly more property on this list, setting
3 aside the items confiscated, than he did when he
4 went from PNM to the Level 4 facility in Southern
5 New Mexico in March of 2014?

6 A. Can I look at that form one more time?

7 Q. Sure thing. Maybe we can do a
8 side-by-side. It's Defendants' Exhibit U2, or in
9 this file, it's Bates No. 28612.

10 A. It appears to me that he has more property
11 on the form on the right, in the 2012 form.

12 Q. And again, I think you said you'd expect
13 someone to take more property with them if they're
14 going to the Level 4 in Southern New Mexico than
15 they would if they're at the North or the South
16 facility; is that right?

17 A. Yes.

18 Q. And here in 2012, as we said, that's about
19 a year-and-a-half before March 2014, right, maybe a
20 little more?

21 A. That's correct.

22 Q. And in this property inventory list on the
23 right, the items that were taken with him that were
24 not confiscated includes three letters; right?

25 A. Yes.

1 Q. It includes five legal letters. Do you
2 see that?

3 A. Yes, I do.

4 Q. It includes one reading book?

5 A. Yes.

6 Q. And it includes two dictionaries; right?

7 A. Yes.

8 Q. If you know, are you familiar with inmates
9 who have legal paperwork or legal appeals going on,
10 do you know whether they have legal dictionaries
11 sometimes in their cells?

12 A. I couldn't answer that, sitting here
13 today.

14 Q. Fair enough. And so seeing the three
15 letters and the five legal letters that -- you see
16 that those were not confiscated, according to this
17 form, at least in 2012; correct?

18 A. Correct.

19 Q. And then do you remember, just a few
20 moments ago, when we went over all of the pages in
21 Mr. Urquizo's file, do you remember ever seeing
22 letters or legal letters, destroyed, sent home, or
23 otherwise confiscated from Mr. Urquizo?

24 A. No.

25 Q. Let's go back to -- and I'm not -- well,

1 let's just go back to -- I don't need to waste all
2 their time. Let go back to Exhibit 779, Bates No.
3 28627. This is a couple pages after we just looked
4 at 28621.

5 Is this a property inventory list for Lupe
6 Urquizo?

7 A. Yes.

8 Q. And this is -- this does not include the
9 inmate's signature; right?

10 A. It does not.

11 Q. It's filled out, it looks like on the
12 bottom there, with a signature, 9/14/2012?

13 A. Correct.

14 Q. And the New Mexico Corrections Department
15 policy states that when a property officer is
16 filling out this form -- or actually New Mexico
17 Corrections Department policy forms, property
18 inventory list, he is to do so in the presence of
19 the inmate; right?

20 A. Correct.

21 Q. That's enough for that form.

22 So Mr. Brewster, you testified earlier, do
23 you remember, that -- in response to Ms. Jacks' IPRA
24 request for the three inmates, on or around March 6,
25 2014, that you provided one property file for Lupe

1 Urquizo?

2 A. Yes.

3 Q. And you provided that file again, after
4 receiving the request and asking your staff that
5 deals with IPRA requests, to search PNM North and
6 South and Southern New Mexico, for property files
7 for Lupe Urquizo; right?

8 A. That's correct.

9 MR. BECK: Your Honor, may I approach the
10 witness?

11 THE COURT: You may.

12 MR. BECK: I'm going to approach the
13 witness with what's been marked for identification
14 purposes as Government's Exhibit 780.

15 May I approach, Your Honor?

16 THE COURT: You may.

17 BY MR. BECK:

18 Q. Mr. Brewster, I'm handing you -- I just
19 handed you a document marked for identification
20 purposes as Exhibit 780. What does the first page
21 of that document say?

22 A. It's a document that says, "Lupe Urquizo
23 property file info from Level 6."

24 Q. Have you ever seen that document before
25 today?

1 A. No.

2 Q. Go ahead and flip through it a little bit,
3 and tell me whether -- you can review them as much
4 or as little as you like, but what I'd like to ask
5 you is whether any of the documents in this document
6 labeled "Lupe Urquizo property file info from Level
7 6" look familiar to you? And by "familiar," I mean
8 have you seen those documents in preparing for your
9 testimony in this case today?

10 A. You know, I've looked at so many
11 documents, but these don't appear to look familiar
12 to me.

13 Q. Is it fair to say these documents, this
14 file, did not come from the New Mexico Corrections
15 Department response to Ms. Jacks' IPRA request?

16 A. They were not sent by my office.

17 Q. Would you bring up Defendants' Exhibit U2?

18 Mr. Brewster, this is the property
19 inventory list that was admitted yesterday as
20 Defendants' Exhibit U2. Do you remember that?

21 A. I do.

22 Q. You don't have any confidence that the
23 property officer filled out this form diligently, do
24 you?

25 A. I don't know that he did.

1 Q. Is that a no?

2 A. That's a no.

3 Q. In fact, you don't have any confidence
4 that a property officer filled out this inventory
5 form at all, do you?

6 A. I don't have any confidence.

7 Q. You don't have any confidence that the
8 property officer inventoried Mr. Urquizo's property
9 on March 6 of 2014, do you?

10 A. I don't know if he did or didn't, but it
11 doesn't appear -- I mean, I can't tell.

12 Q. Under the policy, the property officer is
13 supposed to fill out this form; right?

14 A. That's correct.

15 Q. Supposed to fill it out in the inmate's
16 presence; right?

17 A. Yes.

18 Q. And after he fills out this form, he's
19 supposed to actually put a sticker or some kind of
20 marking material on every single item of an inmate's
21 property; right?

22 A. That's correct.

23 Q. You don't have any confidence he did that,
24 do you -- or she did that, the property officer?

25 A. I don't.

1 Q. You don't have any confidence, do you,
2 that Mr. Urquizo had only the items listed on this
3 sheet, do you?

4 A. Based on all the other documents I've
5 seen, no, I don't.

6 Q. You don't have any confidence whether he
7 even had the things listed on this sheet, do you?

8 A. I can't say that he did.

9 MR. BECK: May I have a moment, Your
10 Honor?

11 THE COURT: You may.

12 MR. BECK: Nothing further, Your Honor.
13 Thank you.

14 THE COURT: Thank you, Mr. Beck.

15 All right. Anybody else have any
16 redirect? Ms. Jacks?

17 MS. JACKS: I do, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. JACKS:

20 Q. Good morning, Mr. Brewster.

21 A. Good morning.

22 Q. When Mr. Beck asked you, you said that
23 Exhibit 778 were not documents provided in response
24 to my IPRA request. Do you recall that testimony?

25 A. I do.

1 Q. Are you sure about that?

2 A. I'd have to look at all the documents to
3 be 100% sure.

4 Q. Let me give you Government's Exhibit 778.
5 I just have a few questions regarding IPRA requests.
6 First of all, did I submit the IPRA request by email
7 on April 13, 2017?

8 A. You did.

9 Q. And did you or people from your office
10 respond to me on several different occasions?

11 A. Yes, we did.

12 Q. And did you, in fact, provide me documents
13 on July 14 of 2017?

14 A. Yes.

15 Q. And did you also provide me documents on
16 July 15 of 2017?

17 A. Yes.

18 Q. And did I continue to bug you and ask you,
19 are you sure this is everything, because I'm not
20 getting everything that I'm asking for?

21 A. Yes, I remember that.

22 Q. And then do you remember --

23 MS. JACKS: Well, Your Honor, I have an
24 email exchange. It's eight pages long, it begins
25 with the IPRA request and ends on September 21 of

1 2017. Can that be marked Defendants' Exhibit W9?

2 Is that okay, Your Honor?

3 THE COURT: Yes.

4 MS. JACKS: May I show this to the
5 witness, Your Honor?

6 THE COURT: You may.

7 BY MS. JACKS:

8 Q. Mr. Brewster, take a look at Exhibit W9
9 and tell me if that isn't the complete series of
10 email exchanges I had with you and some members of
11 your staff regarding the IPRA request between April
12 13, 2017, and September 21 of 2017?

13 A. Yes, this appears to about the
14 communications between your office and my office,
15 and it shows we provided documents on three
16 different instances.

17 Q. Thank you.

18 MS. JACKS: Your Honor, I'd ask that W9 be
19 admitted into evidence.

20 THE COURT: Any objection, Mr. Beck?

21 MR. BECK: No objection, Your Honor.

22 THE COURT: Any objection from anyone
23 else? Not seeing or hearing any, Defendants'
24 Exhibit W9 will be admitted into evidence.

25 MS. JACKS: Thank you.

1 (Defendants' Exhibit W9 admitted.)

2 BY MS. JACKS:

3 Q. And on August 3, did you tell me by email
4 that you had searched the files and you had given me
5 everything that was responsive to my request?

6 A. I did.

7 Q. And then on September 21, did a member of
8 your staff -- I think her name is Leslie --

9 A. Leslie, yes.

10 Q. What's the last name?

11 A. Garcia.

12 Q. Leslie Garcia. Did she email me some
13 additional documents that were found sometime
14 between August 3 and September 21?

15 A. I'm not sure when they were found. I
16 think there was a mistake and they weren't provided
17 earlier, so once we realized we hadn't provided
18 them, we provided them.

19 Q. Okay. And you and I actually sat down
20 this morning and went through that email exchange;
21 right?

22 A. Yes.

23 Q. And we looked at the attachments that were
24 provided on that September 21 email. Do you recall
25 that?

1 A. I looked at them very quickly, yes.

2 Q. And I actually printed them out.

3 MS. JACKS: May I mark this as Defendants'
4 Exhibit next in order, W10? Do you have a sticker?

5 THE COURT: You may.

6 MS. JACKS: May I approach the witness,
7 Your Honor?

8 THE COURT: You may.

9 BY MS. JACKS:

10 Q. And showing you what's been marked as W10,
11 is that a six-page document which consists of
12 various property inventory lists for Reynaldo
13 Enriquez?

14 A. Yes.

15 Q. And are all those property inventory lists
16 from Southern New Mexico Correctional Facility?

17 A. Yes.

18 Q. And was that one of the attachments that
19 you sent me -- or that Ms. Garcia sent me on the
20 September 21, 2017, email?

21 A. I believe it was.

22 Q. And on that email, Defense Exhibit W9. Do
23 you have a pen with you?

24 A. I do.

25 Q. Can you just circle the name of the

1 attachment that that was? I think it's entitled, I
2 think, on the front page.

3 MR. BECK: Objection, Your Honor, leading.

4 MS. JACKS: I'm sorry, I wasn't looking at
5 the right document. W9.

6 A. I'm at W9. What would you like me to do?

7 THE COURT: What's the objection, Mr.
8 Beck?

9 MR. BECK: It was too leading, Your Honor.

10 THE COURT: Overruled.

11 BY MS. JACKS:

12 Q. Can you circle the attachment -- that W10,
13 the name of the attachment that W10 is, on that
14 email?

15 A. Which attachment?

16 Q. Well, we looked at the three attachments
17 this morning; right?

18 A. Yes.

19 Q. And two of them were documents, or two of
20 them consisted of documents you had previously
21 provided; correct?

22 A. That's correct.

23 Q. And then there was the six-page document
24 that you hadn't provided before, regarding Reynaldo
25 Enriquez?

1 A. Right.

2 Q. And do you see the name of that
3 attachment?

4 A. I see there is an Enrique property PNM
5 docs, and then there is a Reynaldo Enriquez, number
6 70329 document.

7 Q. All right. And is that the attachment
8 that we looked at this morning and I had printed out
9 that's sitting before you, as W10?

10 A. I think it is.

11 Q. Can you circle that, please, on the
12 document W9?

13 A. (Witness complies.)

14 Q. Thank you. I'm going to ask you to
15 compare the documents in W10 to Government's Exhibit
16 778.

17 A. They're the same.

18 Q. They're identical, right?

19 A. Yes.

20 Q. So does that change your opinion as to
21 whether the documents provided -- or the documents
22 in Government's Exhibit 778 were, in fact, provided
23 by your office in response to my IPRA request?

24 A. It does refresh my recollection that that
25 happened, yes.

1 Q. So those are some of the responsive
2 documents, 778?

3 A. Yes.

4 Q. And Mr. Beck asked you some questions
5 about Bates stamping. I guess some of the documents
6 that you've been shown yesterday and today have a
7 Bates stamp on the bottom of them, and some of them
8 don't. Do you recall that?

9 A. I do, yes.

10 Q. Okay. Did your office Bates stamp any of
11 the documents that it sent to me?

12 A. No.

13 Q. So somebody else, besides you, put the
14 Bates stamps on those?

15 A. That's correct.

16 Q. So the Bates stamps aren't some sort of
17 indication that the documents came from you?

18 A. I don't know how the Bates stamps got on
19 there. We didn't put them on there, that's all I
20 know for sure.

21 Q. Okay. And there has been a lot of, I
22 guess, questions about an inmate's property file.
23 And I guess I want to ask you, is that really a
24 correct characterization? Is there actually a
25 physical property file for every inmate?

1 A. I couldn't tell you, sitting here today,
2 if there is an actual physical, like, file that
3 they've put documents in. But there is some
4 location where they store these documents.

5 Q. Correct. I'm just asking you, is there a
6 physical file, like if I was an inmate in the New
7 Mexico Department of Corrections, if there is
8 actually a physical file for Amy Jacks' property?

9 A. Probably not, just for your property. But
10 there is probably a -- you know, a file that has
11 inmates' property in that institution for a certain
12 time period.

13 Q. Okay. And I want to direct your attention
14 for Exhibit W7, Bates stamp 53398. I'm just going
15 to put it on the Elmo.

16 And specifically, I want to direct your
17 attention to paragraph 4.

18 A. Okay.

19 Q. "The inmate's personal property inventory
20 list shall be retained in the property office." Is
21 that what the New Mexico Department of Corrections
22 policy is?

23 A. That's what it says, yes.

24 Q. So the documents that you gathered
25 pursuant the my IPRA request, you gathered from the

1 property offices of PNM -- the Penitentiary of New
2 Mexico and Southern New Mexico Correctional
3 Facility; correct?

4 A. Correct.

5 Q. So you had to go actually search those
6 property office -- those property offices for the
7 responsive documents?

8 MR. BECK: Objection, Your Honor, leading.

9 THE COURT: Overruled.

10 A. That's correct.

11 BY MS. JACKS:

12 Q. And with respect to the documents that
13 were requested, did I request the property files for
14 three inmates, or did I request property inventory
15 lists and confiscated property forms for very
16 specific dates?

17 A. You requested documents for very specific
18 dates.

19 Q. And did you provide to me more than what I
20 requested?

21 A. I provided to you more than what you
22 requested, whatever I could locate that was a public
23 record.

24 Q. That applied to the three inmates I was
25 asking about?

1 A. Yes.

2 Q. And not just the specific dates that I
3 asked about?

4 A. Yes.

5 Q. I want to show you a page from Exhibit
6 773, and this is Bates stamp 28647.

7 This is one of the documents that Mr. Beck
8 asked you about, and it's a property inventory list
9 for Reynaldo Enriquez dated 1/28/16. I think what
10 Mr. Beck pointed out -- one of the things Mr. Beck
11 pointed out was that this inventory list is
12 signed -- it appears to be signed by the inmate?

13 A. Yes.

14 Q. But there is no inventory officer's
15 signatures on it?

16 A. That's correct.

17 Q. I think he asked you, you don't know who
18 filled this out, right, suggesting, perhaps, the
19 inmate did it?

20 A. I don't know who filled it out.

21 Q. Okay. I just want to direct your
22 attention to one section of this form where it shows
23 items confiscated -- I'm trying to enlarge it here.
24 Do you see that, items confiscated?

25 A. Right.

1 Q. Three gray shirts, dash "can't have" with
2 an exclamation point?

3 A. Yes.

4 Q. Would you agree with me that if it was the
5 inmate filling this out, he probably wouldn't have
6 confiscated three shirts from himself?

7 MR. BECK: Objection, Your Honor, leading.

8 THE COURT: Overruled.

9 A. I would agree with that.

10 BY MS. JACKS:

11 Q. So based on that, it certainly looks like
12 this was filled out by a correctional officer;
13 right?

14 A. It does appear that it could have been,
15 yes.

16 Q. I need 778. I want to show you the first
17 page of Government's Exhibit 778.

18 And this is a document for Reynaldo
19 Enriquez from Southern New Mexico Correctional
20 Facility on March 7, 2014; is that correct?

21 A. Yes, that's what it appears to be, yes.

22 Q. And this is a document that was directly
23 responsive to my IPRA request; right?

24 A. Yes, it was.

25 Q. It's not something you included just in an

1 effort to give me everything that could -- that I
2 might possibly want?

3 A. That's correct.

4 Q. And first of all, I want to ask you, did
5 you find -- this document is entitled "Southern New
6 Mexico Correctional Facility," and it's March 7,
7 2014. Did you find a similar property inventory
8 list for Lupe Urquizo?

9 A. I don't think so, but I'd have to look at
10 all the documents to know that for sure. Just to be
11 honest with you, I mean I --

12 Q. You have been through a lot of documents
13 this morning, I agree. But as you sit there, you
14 don't think you provided it?

15 A. I don't think so.

16 Q. Okay. And this document appears to be
17 signed by a property inventory officer; correct?

18 A. It does.

19 Q. Do you know what that signature says?

20 A. No.

21 Q. You can't read it, can you?

22 A. I can't read it.

23 Q. And there is no signature by the inmate;
24 is that correct?

25 A. That's correct.

1 Q. So do you know whether this document, this
2 property inventory list, actually was ever provided
3 along with the property to this inmate, Reynaldo
4 Enriquez?

5 A. I don't know that personally, no.

6 Q. Okay. Well, and -- and based on this
7 form, it doesn't look like the inmate acknowledged
8 receipt of it; right?

9 A. There is no indication on the form.

10 Q. And this form -- this is a one-page form.
11 I mean, one page of the form; right?

12 A. Yes.

13 Q. The form is actually triplicate; correct?
14 I'm just showing you the bottom?

15 A. I believe it is triplicate, actually, yes.

16 Q. There we go. I think -- underneath where
17 it says "Inventory officer." Do you see this
18 listing here: Original laundry officer -- goes to
19 the laundry officer, property/ID control officer,
20 and a mail room officer?

21 A. Yes.

22 Q. So that the form is actually an original
23 with two copies underneath it?

24 A. Yes.

25 Q. That gets filled out by some sort of -- I

1 don't know what it's called -- transfer, between the
2 pages?

3 A. Yes.

4 Q. By writing on the top page, it somehow
5 transfers through to the bottom two pages?

6 A. I'm not sure how they do it, exactly, but
7 you're correct that there appears to be three
8 different documents per transaction.

9 Q. I want to show you a different form that
10 Mr. Beck asked you about. This is Government's
11 Exhibit 773. And this is page 28656.

12 Do you recall Mr. Beck asking you some
13 questions about this form?

14 A. Yes, I do.

15 Q. First of all, I just have a question, a
16 general question: Do you know where it says,
17 "Status PHD," what that means?

18 A. I couldn't tell you what the PHD stands
19 for this morning, exactly, but I know what it means.
20 It means that there is some sort of potential
21 prehearing status, or some sort of potential
22 disciplinary issue going on that may require that
23 kind of status designation.

24 Q. Okay. Does PHD stand for Prehearing
25 Detention?

1 A. Yes, that's right.

2 Q. So when an inmate commits some sort of
3 violation of the rules of the institution, their
4 status -- they're put on some sort of restricted
5 status, pending the resolution of that -- of that
6 infraction?

7 A. That's correct.

8 Q. And one of the things that happens is when
9 they're put on restricted status, is that certain
10 property they have is taken from them; right?

11 A. That's correct.

12 Q. Because that's part of the punishment for
13 violating the rules of the institution?

14 A. That's correct.

15 Q. And so does this form appear to be --
16 appear to have been completed, because Reynaldo
17 Enriquez was placed on some sort of restricted
18 status, pending a disciplinary hearing?

19 A. That does appear to be the case.

20 Q. And when an inmate is placed on restricted
21 status and property is removed from him, is it
22 thrown away or is it stored?

23 A. It's either stored or, in some cases, it
24 could be sent home.

25 Q. Okay. So different things happen,

1 depending on the situation and the instructions of
2 the inmate?

3 A. Correct.

4 Q. And so does this form, underneath this
5 column, "Storage D & E," does that appear to be an
6 inventory of Mr. Enriquez' property that's placed
7 into storage because he's put in prehearing
8 detention?

9 A. It does appear to be that, yes.

10 Q. And then when an inmate gets out, say
11 their hearing's over, or they beat that hearing, are
12 they then placed -- are they then moved back into
13 whatever housing is appropriate?

14 A. Yes, they are.

15 Q. And after they're moved back or taken off
16 prehearing detention, is property returned to them,
17 based on what they're permitted to have at their --
18 at their new housing location?

19 A. That's correct.

20 Q. And so sometimes, that's part of the
21 property that's placed into storage, and sometimes
22 that's all of it; right?

23 A. Yes.

24 Q. It just depends on the circumstances?

25 A. It does.

1 Q. I want to show you a similar form from
2 Government's Exhibit 779 at Bates 28610.

3 And this is a similar form for inmate Lupe
4 Urquizo; is that right?

5 A. Yes.

6 Q. And Mr. Beck asked you some questions
7 about this form. Do you recall those?

8 A. I do.

9 Q. So I want to -- I want to just direct your
10 attention to the last column, number 4, the property
11 taken into the unit. Is this an indication that
12 property that had been placed in storage for Mr.
13 Urquizo was then being released to him?

14 A. It appears to be, yes.

15 Q. And in column 3, there is a list of
16 property that -- that is listed or designated for
17 destruction?

18 A. I'm having a -- I'm having a hard time
19 reading that column. Can we blow that --

20 Q. Maybe I'll make it a little bigger, that
21 might help.

22 Can you see it now?

23 A. Yes. Yes.

24 Q. So that's property that is not -- that was
25 taken from Mr. Urquizo, but is not going to be

1 returned to him; it's going to be destroyed?

2 A. That's correct.

3 Q. And Mr. Beck had you compare this page
4 with the page after it, 28611. Do you recall those
5 questions?

6 A. I do.

7 Q. And I guess each of these forms, 28610 and
8 28611, have the same date; right, December 10 of
9 2015?

10 A. May I see the second form? Yes, we have
11 the same date.

12 Q. And so it appears on December 10 of 2015,
13 Mr. Urquizo's housing status changed; right?

14 A. It does appear that way, yes.

15 Q. And when he was moved, he had some
16 property on his person, the property listed here on
17 28611?

18 MR. BECK: Objection, foundation.

19 THE COURT: Overruled.

20 A. That's what it appears.

21 BY MS. JACKS:

22 Q. And then some property returned to him
23 from some -- storage, or from some previous property
24 seizure?

25 A. That's what it appears.

1 MS. JACKS: And can we have -- I forgot
2 what exhibit it was, Mr. Beck, but what exhibit is
3 Mr. Urquizo's physical location history?

4 MR. BECK: 748.

5 MS. JACKS: Is that here in hard copy?

6 MR. BECK: I don't think so.

7 MS. JACKS: Can we please have it? Thank
8 you. And if we could look at the date December 10
9 of 2015, or just enlarge it around that area. Thank
10 you.

11 BY MS. JACKS:

12 Q. Mr. Brewster, looking at the Government's
13 Exhibit 748, do you see the entries around December
14 10 of 2015?

15 A. Yes.

16 Q. And it looks like -- well, first of all --
17 the first -- it looks like Mr. Urquizo was moved on
18 that date; correct?

19 A. He's moved to PNM, according to this
20 document, yes.

21 Q. And he actually -- he started at PNM, but
22 he started at the North facility; right?

23 A. I think that's right. You know, they
24 changed the number designation over there a lot, but
25 I think that's right.

1 Q. So it looks like on December 10, he starts
2 off -- and I'm looking at these entries. Let me --
3 I just circled the three entries that I'm looking
4 at, and I'm looking at -- does it look like he went
5 from the North to the South facility on December 10
6 of 2015?

7 A. You know, again, the numbering system has
8 changed so much. I'm not sure what the "S1BE102S"
9 is. It could be he was moved from South to North.
10 I can't tell. All I know for sure is that he was
11 moved on that day.

12 Q. Let me ask you this: Is the North
13 facility the Level 6 facility?

14 A. Yes, it is.

15 Q. And is the South facility the Level 5
16 facility?

17 A. Yes, it is.

18 Q. And so the South facility is less
19 restrictive than the North facility; correct?

20 A. That's correct.

21 Q. And so an inmate moving from the North
22 facility to the South facility would be eligible to
23 possess more property items at the South?

24 A. Generally speaking, yes.

25 Q. So it wouldn't be unusual for an inmate

1 moving from the North facility to the South facility
2 to regain access to items that had previously been
3 seized from him?

4 A. That's correct.

5 Q. Mr. Beck asked you a lot of questions
6 regarding comparisons of property over time. I'm
7 sure you recall those questions; right?

8 A. I do.

9 Q. So Mr. Brewster, are inmates allowed to
10 send mail?

11 A. They are.

12 Q. Are they allowed to provide things, like
13 books, to other inmates?

14 A. There are a lot of limits on inmates
15 sending books to other inmates.

16 Q. Okay. Do you know whether inmates share
17 books within units?

18 A. They probably do.

19 Q. And there are -- are inmates also allowed
20 to exchange other property?

21 A. Give me an example.

22 Q. Commissary items, nail clippers,
23 magazines?

24 A. They're not supposed to.

25 Q. Okay. But it happens?

1 A. I suspect it happens, yes.

2 Q. And let's just -- I mean, an inmate -- any
3 given inmate's personal possessions are not static
4 over time, are they?

5 A. No.

6 Q. Personal possessions come and go?

7 A. That's correct.

8 Q. And commissary items and things like that
9 come and go?

10 A. Yes.

11 MS. JACKS: Thank you. I have nothing
12 further.

13 THE COURT: Thank you, Ms. Jacks.

14 Do any other defendants have any redirect
15 of Mr. Brewster?

16 MS. DUNCAN: No, Your Honor.

17 THE COURT: All right. Mr. Beck, did you
18 have recross?

19 MR. BECK: Thank you, Your Honor.

20 RECROSS-EXAMINATION

21 BY MR. BECK:

22 Q. Can we go to Bates No. 28611 of Exhibit
23 779, please. The page just before it, 28610.

24 All right. Mr. Brewster, you just went
25 over this list of items with Ms. Jacks; do you

1 recall that?

2 A. I do.

3 Q. And there, in "destroyed" -- in the
4 destroyed column -- this document is dated
5 12/10/2015; right?

6 A. That's correct.

7 Q. And there under the destroyed column it
8 looks like there were 30-plus letters destroyed. Do
9 you see that?

10 A. I do.

11 Q. Ten folders destroyed?

12 A. Yes.

13 Q. Four books destroyed?

14 A. Yes.

15 Q. Now, I want to go to Bates No. 28612 of
16 this document, which is also Defendants' Exhibit U2.
17 This is Lupe Urquizo's property inventory list from
18 2014. Do you see that?

19 A. Yes.

20 Q. And 2014, this is before December of 2015;
21 right?

22 A. That's correct.

23 Q. And there are no folders indicated in the
24 miscellaneous items here on this property inventory
25 form; right?

1 A. That's correct.

2 Q. And do you recall, just a moment ago,
3 there were ten folders destroyed in December of
4 2015?

5 A. I do recall that, yes.

6 Q. There's no letters on this Defense Exhibit
7 U2 on this property inventory sheet; right?

8 A. On this current document, there's no
9 letters marked, yes.

10 Q. Do you recall that on December 2015, that
11 document stated that there were 30-plus letters that
12 were destroyed?

13 A. Yes.

14 Q. And here on Defendants' Exhibit U2, Bates
15 28612, on this document, there's no books listed on
16 this document; right?

17 A. Let me just double-check that. I don't
18 see any listed, no.

19 Q. Do you recall that December 2015, that
20 document stated that there were four books
21 destroyed?

22 MS. JACKS: Your Honor, I'm going to
23 object. This is beyond the scope of cross.

24 THE COURT: Overruled.

25 A. Can I go and back and look at it?

1 BY MR. BECK:

2 Q. Sure thing. Bates No. 28610. Do you see
3 where there were four books destroyed?

4 A. Yes, I do see that.

5 Q. Then if we go back to Bates 28612, again,
6 here, there's no books listed; right?

7 A. That's correct.

8 MR. BECK: Nothing further, Your Honor.

9 THE COURT: Thank you, Mr. Beck.

10 Anything further, Ms. Jacks? Any other
11 defendants?

12 All right. Mr. Brewster, you may step
13 down. Is there any reason that Mr. Brewster cannot
14 be excused from the proceedings, Ms. Jacks?

15 MS. JACKS: Yes, he may.

16 THE COURT: Mr. Beck, do you object?

17 MR. BECK: We'd like to keep him on
18 reserve, but he may return to Santa Fe.

19 THE COURT: All right. You're subject to
20 recall, but you may leave the courtroom, and you are
21 free to leave the courthouse.

22 THE WITNESS: All right.

23 THE COURT: Thank you, Mr. Brewster. You
24 may be excused.

25 All right. Let's take our second morning

1 break, and we'll be in recess for about 15 minutes.

2 All rise.

3 (The jury left the courtroom.)

4 THE COURT: All right. We'll be in recess
5 for about 15 minutes.

6 (The Court stood in recess.)

7 THE COURT: All right. Ms. Fox-Young?
8 We'll go on the record.

9 MS. FOX-YOUNG: Thank you, Your Honor.

10 Yesterday during Agent Acee's testimony, I
11 moved the admission of Defendants' Exhibit FW. The
12 Court looked at the document that we had created,
13 admission by the United States, and the Court asked
14 us to go ahead and redact the actual pleading filed
15 by the Government to conform with -- well, and to
16 address with the Government whether they would
17 object to that exhibit.

18 We have done that. We sent it to the
19 Government yesterday. The Government has indicated
20 that they do object. I've marked that as
21 Defendants' Exhibit FW-1, if the Court would like to
22 take a look at it.

23 THE COURT: All right. Let me take a look
24 at it.

25 Mr. Castellano, tell me what the objection

1 is.

2 MR. CASTELLANO: Yes, Your Honor. The
3 first is that the document was submitted for a
4 different purpose, for purposes of that hearing.
5 The second is that the statement itself contains
6 hearsay, and the third is that the statement will be
7 taken out of context and be subject to
8 misinterpretation if the jury doesn't know why it
9 was that he was not returned to the facility.

10 It says safety concerns. I don't recall
11 what the issue was at the time, but it could have
12 been related to his health, it could have been
13 related to threats, it could have been related to
14 any number of things. And so it's going to leave a
15 false impression with the jury.

16 And like I said, it contains hearsay, so
17 our representations are based on information we got
18 from other materials. And so it will be basically
19 moving hearsay into evidence without any context.

20 THE COURT: All right. Well, it looks
21 like they've appropriately marked it up. So I'll
22 admit Defendants' Exhibit FW-1. And FW will not be
23 admitted, it will be just be for record purposes,
24 but FW-1 would be admitted.

25 MS. FOX-YOUNG: Your Honor, would you

1 permit us to do that in front of the jury?

2 THE COURT: All right.

3 MR. CASTELLANO: Your Honor, if I could
4 have the visualizer, if the Court is going to admit
5 that exhibit --

6 THE COURT: I've already ruled on it.

7 All rise.

8 While we're bringing the jury in,
9 Mr. Johnston was informed to not speak of this
10 incident this morning with fellow jurors. He
11 indicated he has not. But he says, "It's already
12 around."

13 Federal Police Service, I think, were
14 going to be speaking with him through the 11:30
15 break. And the conversation will take place in the
16 US Marshal Service's lobby.

17 (A discussion was held off the record.)

18 THE COURT: No, tell them to bring him up.
19 I told them to do it at the lunch hour.

20 All right. Go ahead, Mr. Castellano.
21 They're trying to delay things, so I've told them to
22 bring him up. I told them to do it at the lunch
23 hour.

24 MR. CASTELLANO: If I could have the
25 visualizer, Your Honor --

1 THE COURT: Please be seated.

2 MR. CASTELLANO: What I'm asking for is a
3 more complete statement. So I've included an
4 additional section, which the defense has proposed
5 be deleted, and that's that the handicapped cells
6 were located in the North facility, which is Level
7 6. That's one reason he was in Level 6. And that
8 he was put on a waiting list for a special mentoring
9 program.

10 And then he was eventually returned to
11 Southern New Mexico Correctional Facility on April
12 18, 2015. I think that's a more complete statement
13 of what happened. So if the Court is going to admit
14 it, I would ask that the additional language be
15 included.

16 And the other reason there is an
17 objection -- I understand the Court's ruling -- is
18 that the Court can, for preliminary rulings, the
19 Court can consider hearsay and things of that
20 nature. But the jury shouldn't be considering
21 hearsay.

22 THE COURT: Do you have any problem with
23 including the fuller statement that the Government
24 is proposing?

25 MS. FOX-YOUNG: Yes, Your Honor. And I'd

1 just say, first of all, it's not hearsay. It's a
2 statement of a party opponent, which we're
3 proposing. This is actually -- the statement that
4 the Government is proposing to include is on a
5 different page of the document, addressing a
6 different issue. We gave the Government a chance,
7 as the Court had ordered last night, to offer --

8 THE COURT: This looks like it's on page
9 3, which is right beneath what you're proposing.

10 MR. CASTELLANO: Yes, sir. I
11 appropriately marked it with the red marking.

12 THE COURT: So it's on the same page, it's
13 just the next sentence.

14 MS. FOX-YOUNG: So, Your Honor, is the
15 Court considering including the sentence that -

16 THE COURT: How much are you wanting
17 included? Just the one that's in the bracket, Mr.
18 Castellano, or are you wanting more?

19 MR. CASTELLANO: Yes, Your Honor, it would
20 be within the bracket.

21 THE COURT: All right. So just that first
22 paragraph, then.

23 MS. FOX-YOUNG: So to add the language
24 beginning with "PNM's only handicapped cells," and
25 ending with "when he was transferred back to SNMCF."

1 THE COURT: Is that correct?

2 MR. CASTELLANO: Yes, sir, that's correct.

3 MS. FOX-YOUNG: Your Honor, we object.

4 We're offering the statement of the party opponent.

5 I think the Government can deal with this, if they

6 want to, on cross or in rebuttal. You know, we just

7 don't have any say as to what statements of Rudy

8 Perez come in in this trial when the Government

9 offers them. This is a statement of the --

10 prosecutor's statement of party opponent.

11 So I guess I would just wait for the

12 Court's ruling. If the Court is inclined to include

13 something further, we can work on re-redacting the

14 document.

15 THE COURT: Well, I think I need to be

16 consistent. I've kept out the defendants'

17 statements being offered by the defendants

18 themselves. And so I'll need to do the same for the

19 Government. So I'll admit FW-1. And then the

20 Government, if it wants to get into the statement,

21 will need to provide some basis for getting any

22 other statements in.

23 MR. CASTELLANO: Sure, Your Honor. So we

24 should expect rebuttal on that, then.

25 THE COURT: All right.

1 (Defendants' Exhibit FW-1 admitted.)

2 MS. FOX-YOUNG: I had asked the Court if I
3 could admit in open court. I don't need to admit it
4 in open court, I just may take it up with Agent
5 Acee. Although I have already completed my direct,
6 just briefly on redirect.

7 THE COURT: All right. I think you were
8 the last one. So I'll just -- when Mr. Acee is back
9 on the stand, I'll call on you to continue your
10 direct.

11 MS. FOX-YOUNG: Thank you, Judge.

12 THE COURT: Ms. Fox-Young.

13 While we're waiting for the jury -- for
14 the jurors to come back in, let me make a few
15 comments on the jury instructions. I think I have
16 taken care of everything in the letter, with the
17 exception of the accomplice instruction on number
18 11. But the parties told me in the letter is the
19 parties have modified instruction 11 to include the
20 identities of the witnesses to whom this instruction
21 applies.

22 The instruction is red lined to reflect
23 the changes made and agreed to by the parties.
24 However, when you go to red line instruction number
25 11, no names are added. So if you want me to try to

1 include that in the draft that I'm typing up today,
2 you might shoot Ms. Standridge a list of names. But
3 they didn't make it. So there is no --

4 MS. JACKS: Probably my mistake, so let me
5 check it and see if I can't fix it.

6 THE COURT: All right. I think that's all
7 I had on the letter. Let me ask you, I think there
8 was one other thing on that letter.

9 All right. I took everything out on the
10 last paragraph that y'all requested. Did you have a
11 chance to look at my number 8, that you have in
12 front of you? Did the defendants -- if I take out
13 that second sentence, do y'all still want number 8
14 out? If you do, that's fine. I just thought that
15 it might be helpful to have that instruction. I
16 understand why you wouldn't want the second
17 sentence. But do you want it in or out? It's
18 y'all's call.

19 MR. CASTELLANO: It's number 8 of which
20 set?

21 THE COURT: The one I just passed out to
22 you, the one that they're typing up in Albuquerque.

23 MR. CASTELLANO: I have it.

24 MR. LOWRY: Your Honor, my point here, and
25 it's one that carried over into our edits in the

1 instructions in total. And I don't disagree that
2 everybody has been convicted, but if we could just
3 have an "or" when we're talking about the
4 defendants, I think it goes Sanchez, Baca, Perez
5 "or".

6 THE COURT: Okay.

7 MR. LOWRY: It was just a philosophical
8 point we were trying to make throughout all of the
9 instructions, to keep the jury from thinking this is
10 one unified group of individuals.

11 THE COURT: All right. So on number 8, do
12 you want it in or out, with that change to "or"?

13 MS. JACKS: First of all, I appreciate the
14 edits to number 8, and I like the instruction. I
15 wanted -- Mr. Lowry reminded me of the Court's
16 earlier comments. I think, given the fact that each
17 defendant has a right to have the jury consider them
18 separately, we did try to use -- I think we made
19 modifications using the word "defendant" or "a
20 defendant" throughout the instructions.

21 And I think this instruction is another
22 instruction that if we're going to keep it in, could
23 use such a modification. So, in other words, you've
24 heard evidence that a defendant has been convicted
25 of a felony. The fact that a defendant has been

1 convicted of another crime does not mean that the
2 defendant committed the crime charged.

3 I think one of the things that we thought
4 by listing the defendants conjunctively with an
5 "and" throughout the instructions really group them
6 together, and suggested that the case is won or lost
7 by all of them as a group.

8 THE COURT: Well, we certainly are telling
9 the jurors numerous times, not to do that. Now,
10 there is -- we can't control everything. But on
11 this one, you want to change it to "you've heard
12 evidence that" -- just "a defendant"?

13 MS. JACKS: I would like that. I mean, I
14 think we tried to do that throughout the
15 instructions, and maybe it's something we can
16 discuss with the Court at a different time. But I
17 thought those modifications were preferable
18 throughout the instructions.

19 THE COURT: Well, on this one -- let's
20 focus on this one. You've heard evidence that "a
21 defendant." Does that work for you, Mr. Lowry?

22 MR. LOWRY: Pardon me, Your Honor? I
23 would -- if we're keeping it, and we think we
24 probably should, given that there is an allegation
25 involving Mr. Baca's 1989 murder came in, but I

1 would say that you may find them guilty of the
2 crimes charged, I'm fine with that.

3 THE COURT: So what Ms. Jacks is
4 suggesting is that, at least here, we won't try to
5 decide the global issue, here, but I said I'd be
6 receptive to looking at these maybe one at a time.
7 Unless the Government wants to go to a global
8 defendant. But you're comfortable with changing it
9 to "a defendant" here?

10 MR. LOWRY: Yes, Your Honor.

11 MR. MAYNARD: And for Mr. Herrera, as
12 well, "a defendant," I think is --

13 MR. VILLA: Same for Mr. Perez.

14 MS. JACKS: And to answer the Court's
15 question really quickly on the accomplice, I think
16 that was just a typo in the letter. The
17 instruction, as red lined, is what the parties
18 agreed on.

19 THE COURT: Okay. So we're not going to
20 have individual names in the instruction?

21 MS. JACKS: Correct. That's what we
22 agreed on.

23 THE COURT: All right.

24 (The jury entered the courtroom.)

25 THE COURT: All right. Everyone be

1 seated.

2 All right. Do the defendants have their
3 next witness or evidence?

4 MS. BHALLA: Ms. Jacks went to go get her
5 witness.

6 THE COURT: I see Ms. Jacks right there.

7 MS. JACKS: The witness is right behind
8 me.

9 We call William Edgman.

10 THE COURT: Mr. Edgman, if you'll come up
11 and stand next to the witness box on my right, your
12 left, before you're seated, Ms. Standridge, my
13 courtroom deputy, will swear you in.

14 WILLIAM EDGMAN,
15 after having been first duly sworn under oath,
16 was questioned, and testified as follows:

17 THE CLERK: State and spell your name for
18 the record.

19 THE WITNESS: My name is William Edgman.
20 Last name is Edgman, E-D-G-M-A-N.

21 THE COURT: Mr. Edgman.

22 Ms. Jacks?

23 MS. JACKS: Thank you.

24

25

1 DIRECT EXAMINATION

2 BY MS. JACKS:

3 Good morning, Mr. Edgman. How are you
4 employed?

5 A. I am currently the Deputy Warden of
6 Operations at Southern New Mexico Correctional
7 Facility.

8 Q. And back in 2014, did you also work at
9 Southern New Mexico Correctional Facility?

10 A. I did.

11 Q. And how -- what was your position at that
12 point in time?

13 A. In 2014, I was a major, the Chief of
14 Security.

15 Q. I'm sorry, I didn't hear you.

16 A. I was the major, the Chief of Security.

17 Q. And on March 7, 2014, was there a homicide
18 at Southern New Mexico Correctional Facility?

19 A. Yes, there was.

20 Q. And after the homicide, did you perform --
21 let me go back for a second. Are there security
22 cameras at Southern New Mexico Correctional
23 Facility?

24 A. Yes, there are.

25 Q. And specifically, are there security

1 cameras in Unit 1-A?

2 A. Yes, there are.

3 Q. Okay. And after the homicide on March 7,
4 2014, did you perform a review of the security
5 camera?

6 A. I did.

7 Q. And are the cameras capable of recording
8 to some sort of storage device?

9 A. Yes.

10 Q. And can you just tell us briefly what that
11 is?

12 A. They record onto a DVR system.

13 Q. So there is some degree of electronic
14 storage?

15 A. Correct.

16 Q. And back in 2014, do you know the length
17 of time that the video was actually stored before it
18 was overwritten?

19 A. Not exactly, I do not.

20 Q. Okay. Can you give us a time period?

21 A. When the system first was installed, we
22 had a retention time of up to 60 days. We had
23 several DVRs. I believe we had eight DVRs.
24 Depending which DVR was recording a certain camera,
25 we had anywhere from 20 to 60 days.

1 Q. I want to ask you some questions
2 specifically about the cameras in Unit 1-A, blue pod
3 and yellow pod.

4 A. Okay.

5 Q. Can we have Exhibit E10, E as in echo, 10?
6 Mr. Edgman, do you recognize this exhibit,
7 E10?

8 A. Yes, I do.

9 Q. And can you tell us whether the security
10 cameras in blue pod are depicted in this exhibit?

11 A. Yes, they are.

12 Q. Can you point to them?

13 A. (Witness complies.)

14 Q. Okay. You've drawn a blue circle around
15 each of the three cameras; is that correct?

16 A. Correct.

17 MS. JACKS: Can I -- I have a copy of E10?
18 And I'd like to mark that. Can we do E19?

19 And Your Honor, I'm going to approach the
20 witness and just ask him to mark this photograph in
21 the same manner as he marked the screen.

22 MR. CASTELLANO: There is no objection to
23 its admission, Your Honor.

24 THE COURT: All right. Any objection from
25 any other defendant? You're moving it, Ms. Jacks?

1 MS. JACKS: I will move it in as soon as
2 he marks it.

3 THE COURT: All right. Defendants'
4 Exhibit E19 will be admitted into evidence.

5 MS. JACKS: Thank you. I'm going to have
6 him put one more marking on the exhibit, if there is
7 no objection.

8 THE COURT: Any objection, Mr. Castellano?

9 MR. CASTELLANO: No, Your Honor.

10 (Defendants' Exhibit E19 admitted.)

11 BY MS. JACKS:

12 Q. Mr. Edgman, did you determine, when you
13 did your review of the camera system, whether all
14 three of those cameras in blue pod were operational
15 as of March 7, 2014?

16 A. There was one camera that was not.

17 Q. Which camera was that?

18 A. That would be the right camera.

19 Q. Okay. You just marked sort of an arrow
20 pointing towards it?

21 A. Right.

22 Q. Can you make the same marking on E19,
23 please?

24 A. (Witness complies.)

25 Q. Just so we're clear, that camera -- was it

1 broken completely or was it -- did it produce an
2 image, but just not a good image?

3 A. It produced an image; not a good image.

4 Q. And specifically referring you to that
5 particular camera, the one that was not working very
6 well, what portion of the unit did that capture?

7 A. That covers the right-hand side of that
8 pod.

9 Q. If we can have Exhibit E8.

10 Looking at Exhibit E8, is there a portion
11 of this exhibit that would have been recorded on
12 that camera, if it was working properly?

13 A. Yes.

14 Q. And can you describe to us what portion of
15 that exhibit?

16 A. So the bottom portion of that side of the
17 tier, you're going to have four cells. The one
18 showing at the bottom is 116, so it would cover 16,
19 15, 14, and 13.

20 Q. So 116, and the three cells that would be
21 to the left of it, as I'm looking at the picture?

22 A. Correct.

23 Q. And that's also the camera that covers the
24 inner pod emergency doors; right?

25 A. They'll be shown on that camera, correct.

1 Q. Okay. And you specifically pointed out
2 cell 116. Would that camera also capture the top
3 tier, 108, and the cells to the left of that?

4 A. Yes, it would.

5 Q. So have you reviewed the security video
6 from the March 7, 2014, the day of the homicide?

7 A. I've seen it.

8 Q. Is there any video that was preserved from
9 this camera that wasn't functioning properly?

10 A. Not that I saw.

11 Q. Now, I want to ask you some questions
12 about the cameras in yellow pod. Can we have
13 Exhibit G14?

14 Mr. Edgman, do you recognize what's
15 depicted in this photograph?

16 A. Yes, I do.

17 Q. Can you tell us?

18 A. It's 1-A, A pod -- yellow pod in 1-A.

19 Q. Do you see the security cameras in that
20 pod?

21 A. I do.

22 Q. Can you circle them on the screen for us,
23 please?

24 A. (Witness complies.)

25 Q. And again, I have a copy of this

1 photograph -- I'd like this to be marked next in
2 order. What is it, G15?

3 Mr. Edgman, is G15 a copy of what we see
4 on the screen?

5 A. Yes, it is.

6 Q. And can you circle the three security
7 cameras in yellow pod? You already did that.

8 A. I did that.

9 Q. Thank you. Were all three of these cameras
10 operational on March 7, 2014?

11 A. No, they were not.

12 Q. Which cameras, if any, or which cameras
13 were broken?

14 A. The right camera.

15 Q. So the same one as in blue pod?

16 A. Correct.

17 Q. And can you mark that camera on this
18 diagram?

19 A. (Witness complies.)

20 Q. And can you mark the camera on the Exhibit
21 G15? Thank you.

22 Is there a camera in yellow pod that
23 captures the inner pod security doors between yellow
24 pod and blue pod?

25 A. Yes.

1 Q. And which camera is that?

2 A. That would be the left camera.

3 Q. Can you point it out on the screen?

4 A. (Witness complies.)

5 Q. And can we have G9, please?

6 Do you see the inner pod security doors in
7 that photograph, G9?

8 A. Yes.

9 Q. And are those doors captured by the camera
10 that you just indicated?

11 A. Yes.

12 Q. And that camera was operational on March 7
13 of 2014?

14 A. Yes.

15 Q. Was any video from that camera, that
16 yellow pod camera that captured the inner pod
17 security doors, was any of that video preserved in
18 connection with the investigation into the homicide?

19 A. I do not know.

20 MS. JACKS: Your Honor, at this point, I
21 move E19 and G15 into evidence.

22 THE COURT: E19 I thought we had admitted.

23 MS. JACKS: Maybe we already did. And
24 G15?

25 THE COURT: Any objection on G15?

1 MR. CASTELLANO: No objection.

2 THE COURT: All right. Anyone else? Not
3 hearing or seeing any objection, Defendants' Exhibit
4 G15 will be admitted into evidence.

5 (Defendants' Exhibit G15 admitted.)

6 MS. JACKS: I have nothing further.

7 THE COURT: Thank you, Ms. Jacks.

8 Any other defendant have direct
9 examination of Mr. Edgman?

10 MR. LOWRY: Just briefly.

11 THE COURT: Mr. Lowry.

12 DIRECT EXAMINATION

13 BY MR. LOWRY:

14 Q. Good morning, Mr. Edgman.

15 A. Good morning.

16 Q. As part of the camera security system, did
17 the guards in the tower overlooking the pods have a
18 monitor for that system?

19 A. When the system was first installed, yes.
20 I don't recall if, at that point in time, that the
21 monitor was actually operational. We had a lot of
22 issues with that system.

23 Q. That was my question: Do you know when
24 the monitor system came operational for the
25 individual video cameras:

1 A. Not exactly, I don't know.

2 MR. LOWRY: No further questions.

3 THE COURT: Thank you, Mr. Lowry.

4 Any other defendant? Mr. Maynard?

5 MR. MAYNARD: Thank you.

6 DIRECT EXAMINATION

7 BY MR. MAYNARD:

8 Q. Mr. Edgman, if I understand your
9 testimony, in March of 2014, with the camera
10 surveillance system, there is a capacity to save 20
11 to 60 days?

12 A. Correct, depending on which DVR or server
13 that video was getting recorded on.

14 Q. And that was with respect to the cameras
15 in the blue pod and the yellow pod or the green one,
16 for that matter?

17 A. Correct.

18 Q. Now, were you -- are you familiar at all
19 with the investigation of that homicide?

20 A. Bits and pieces of it.

21 Q. And you're aware that part of the homicide
22 was caught on camera in the blue pod?

23 A. Correct.

24 Q. And there was a question a moment ago from
25 Ms. Jacks about whether or not any footage from the

1 yellow pod was retrieved and used in the
2 investigation.

3 A. Correct.

4 Q. Do you know if any such footage was
5 preserved?

6 A. That I do not know.

7 Q. If it had been preserved, would you have
8 probably learned about that, being familiar with the
9 investigation, generally?

10 A. Probably. I mean, I don't know all the
11 aspects of the case as it is, so I could have been
12 privy to it. I might not have been.

13 Q. All right. And that left-handed camera in
14 yellow pod, does it have a field of vision onto the
15 door that separates the blue and yellow pod?

16 A. Yes.

17 Q. All right.

18 MR. MAYNARD: No further questions.

19 THE COURT: Thank you, Mr. Maynard.

20 Anything else? On behalf of Mr. Perez,
21 anything?

22 MR. VILLA: No, Your Honor.

23 THE COURT: All right.

24 Mr. Castellano, do you have
25 cross-examination of Mr. Edgman?

1 MR. CASTELLANO: Yes, Your Honor.

2 THE COURT: Mr. Castellano.

3 CROSS-EXAMINATION

4 BY MR. CASTELLANO:

5 Q. Is it Deputy Warden now?

6 A. Yes, it is.

7 Q. All right, sir. When you -- following the
8 Javier Molina murder, were you asked to conduct a
9 review of the camera systems in the facility?

10 A. Yes, I was.

11 Q. When you did so, did you prepare a report
12 documenting any issues with the cameras in the
13 facility?

14 A. Yes, I did.

15 MR. CASTELLANO: May I approach, Your
16 Honor?

17 THE COURT: You may.

18 MR. CASTELLANO: May I approach the
19 witness, Your Honor?

20 THE COURT: You may.

21 BY MR. CASTELLANO:

22 Q. Deputy Warden, I'm showing you what's been
23 marked as Government's Exhibit 782. Do you
24 recognize that document?

25 A. I do.

1 Q. How do you recognize it?

2 A. Because I'm the one that generated it.

3 Q. I think you testified you generated it
4 because there was a check of the security cameras
5 following the Javier Molina murder?

6 A. Correct.

7 MR. CASTELLANO: Your Honor, at this time,
8 I move the admission of Government's Exhibit 782.

9 THE COURT: Any objection?

10 MS. JACKS: No, Your Honor.

11 THE COURT: Not seeing or hearing any
12 objection, Government's Exhibit 782 will be admitted
13 into evidence.

14 (Government Exhibit 782 admitted.)

15 MR. CASTELLANO: May I publish to the
16 jury?

17 THE COURT: You may.

18 BY MR. CASTELLANO:

19 Q. Okay. So the document itself says, "The
20 following cameras are nonoperational"?

21 A. Correct.

22 Q. And at this time, this is the document
23 which is prepared three days after the Javier Molina
24 murder?

25 A. Yes.

1 Q. Now, when you mentioned the blue pod right
2 camera, where was that documented on this document?

3 A. It's camera 106 that says "1-A, B, right,
4 poor quality."

5 Q. I'm going to put a little dot by there.
6 So 1-A is Housing Unit 1-A and B is the blue pod?

7 A. Correct.

8 Q. And then as you said earlier, the right
9 camera is what covers the right portion of the pod.

10 A. Yes.

11 Q. And it says "poor quality," so if you can
12 define it for us as best as possible what you
13 remember about that being a poor quality image?

14 A. So if I put down "poor quality," it means
15 you can't see anything. You can see the light
16 showing that video feed is coming in, but you can't
17 distinguish what anything is, what the objects are,
18 or anything like that.

19 Q. So the camera was sending information, but
20 you couldn't tell what it was?

21 A. Couldn't make it out, correct.

22 Q. And then where did you document yellow pod
23 and the right camera in that pod?

24 A. 102. 1-A, A, right.

25 Q. I put a dot next to 102. That's the one

1 you said was yellow pod, also right camera?

2 A. Correct.

3 Q. And so just briefly, as you went through
4 all the cameras in the system, then, each of these
5 cameras had issues with them; is that correct?

6 A. Yes.

7 Q. What type of problems did you have with
8 the camera system back then?

9 A. We had multiple cameras that weren't
10 working. We had DVRs that were down, DVRs not
11 recording. There was a whole gamut of issues with
12 that system back then.

13 Q. So let me show you the second page of that
14 exhibit, Exhibit 782.

15 And on that exhibit, you have some
16 notations regarding DVRs in the lower left-hand
17 corner of that document.

18 A. Correct.

19 Q. And so the same thing, so -- and DVR, does
20 that stand for "digital video recorder"?

21 A. Yes.

22 Q. And is that the device that was recording
23 the information as it came in?

24 A. Yes.

25 Q. And so some of the recordings themselves

1 or the recorders themselves were not retaining
2 information; is that accurate?

3 A. Yes.

4 Q. Now, you gave us some additional numbers
5 about the retention of the system. Can you tell the
6 members of the jury how the system worked in terms
7 of actually retaining information? And in other
8 words, would it retain information, and as new
9 information came in, would it be recorded over?

10 A. Yes. The information would come in and go
11 onto just -- like a hard drive within the server
12 itself, and then once that server was full, it would
13 loop around and record over the oldest information
14 that went on.

15 Q. And was there a difference in terms of
16 what certain cameras would capture in terms of how
17 much material it would retain?

18 A. Yes.

19 Q. And how was -- why was there a difference
20 between either cameras or DVRs?

21 A. Just breakdowns in the system itself.
22 Once it gets recorded over and over and over, and
23 you start calling in memory within that disc, you
24 know, with batteries and stuff. And the quality of
25 the DVRs just went down over the years.

1 Q. Would it make a difference if there was
2 actually activity in a pod versus non-activity? So,
3 if there was no activity, would the camera still
4 record information, or would it record more if there
5 was --

6 A. It would record more on motion.

7 Q. So a busy pod would collect more
8 information, and it would take a shorter period of
9 time to overwrite that information?

10 A. Yes.

11 Q. Now, at some point, did the retention
12 ability of the system break down in terms of, was it
13 always up to 60 days of retention?

14 A. No, it wasn't always.

15 Q. Okay. So what would be kind of a shorter
16 period of time that you're aware of that a DVR would
17 maintain information?

18 A. I think the shortest amount of time I
19 remember was anywhere from 17 to 20 days.

20 Q. I'm sorry. There was a cough, I didn't
21 hear.

22 A. The shortest amount of time that I
23 remember was within 17 to 20 days.

24 Q. Since the information is overwritten, how
25 is it that -- let's say an incident like Javier

1 Molina happens -- how is it that that information is
2 removed from the system and retained?

3 A. It's downloaded onto a DVD.

4 Q. At that point you can actually cut out a
5 piece of the video and then save that for court or
6 other purposes?

7 A. Right.

8 Q. And then in this case, we had two camera
9 angles, but not the third?

10 A. Right.

11 Q. Now, at the time this happened, were you
12 aware of a -- some paperwork being passed from
13 yellow pod to blue pod?

14 A. I was not.

15 Q. Had you been aware of that, would you have
16 then tried to get video from yellow pod, in addition
17 to blue pod?

18 A. Would I have tried to get the video?

19 Q. Yes.

20 A. I would not.

21 Q. And why is that?

22 A. Because I'm not -- I wasn't part of the
23 investigation.

24 Q. Now, the -- where can someone see all the
25 camera systems at the facility at Southern?

1 A. In master control.

2 Q. And other than master control, is there
3 any other place you can have access to all the
4 cameras in the facility?

5 A. At that point in time, no.

6 Q. And at that point in time, could you see
7 all the cameras at the same time, or did you have to
8 scroll through different camera angles?

9 A. You had to scroll through the cameras.

10 Q. I'm going to show you Government's Exhibit
11 162, I think, if I have the right number.

12 Okay, Deputy Warden Edgman, I'm going to
13 see if we can focus on just one portion of the
14 exhibit. I'll zoom in, which would be what -- would
15 be blue pod. Can we enlarge that portion?

16 Okay. If you can -- on Government's
17 Exhibit 162, this is the pod on the diagram that is
18 furthest south on that exhibit. If you can, just
19 touch your screen approximately where the cameras
20 would be located.

21 A. (Witness complies.)

22 Q. Now, you said each of these cameras
23 captures a certain sector of the pod; is that
24 accurate?

25 A. Correct.

1 Q. As best you can, it doesn't have to be
2 perfect, give us an idea of what sector each camera
3 would cover.

4 A. (Witness complies.)

5 Q. So it's fair to say you've basically drawn
6 three dots where the cameras are, and then the
7 equivalent of a triangle coming from the camera to
8 basically make sectors or slices out of the pod; is
9 that accurate?

10 A. Correct. And they had overlying sectors.

11 Q. And I'm going to put an "X" here where the
12 words "inner pod door" are located. And is that the
13 section where we would not be able to see the camera
14 angle?

15 A. Correct.

16 Q. In other words, this camera did not
17 capture the inner pod door?

18 A. Correct.

19 Q. And if a camera wasn't working, could
20 master control let you know? Or what were they
21 supposed to do if they found out a camera wasn't
22 working?

23 A. If they found out a camera wasn't working,
24 they documented it and informed somebody.

25 Q. What would be the next step, in terms of

1 addressing that problem?

2 A. Try to get the camera contractor out to do
3 some maintenance or troubleshoot it.

4 Q. How quick was that turnaround time to get
5 cameras repaired back in 2014?

6 A. Nonexistent.

7 Q. Okay. So once the camera was down, it was
8 virtually impossible to get that repaired under the
9 contract?

10 A. Yes.

11 Q. Do you know why that is?

12 A. Not exactly, no.

13 Q. Do you know if there was a maintenance --
14 a maintenance provision in the contract where
15 somebody who installed the system would be required
16 to come out and maintain the system?

17 A. At that point in time, no. I do not know
18 at that point in time.

19 MR. CASTELLANO: May I have a moment, Your
20 Honor?

21 THE COURT: You may.

22 MR. CASTELLANO: Thank you, Your Honor. I
23 pass the witness.

24 THE COURT: Thank you, Mr. Castellano.

25 Any redirect of Mr. Edgman, Ms. Jacks? Or

1 anybody else?

2 MS. JACKS: No, Your Honor.

3 THE COURT: All right. Mr. Edgman, you
4 may step down.

5 Is there any reason Mr. Edgman cannot be
6 excused from the proceedings?

7 MS. JACKS: No.

8 THE COURT: How about you, Mr. Castellano?

9 MR. CASTELLANO: No.

10 THE COURT: Not seeing or hearing any
11 objection, you're excused from the proceedings.
12 Thank you for your testimony.

13 All right. Ms. Jacks, do the defendants
14 have their next witness or evidence?

15 MS. JACKS: I do, Your Honor. At this
16 point in time I call Jodi Upshaw.

17 THE COURT: Ms. Upshaw, if you'll come up
18 to the witness box on my right, your left, before
19 you're seated, my courtroom deputy, Ms. Standridge,
20 will swear you in.

21 JODI LYNN UPSHAW,
22 after having been first duly sworn under oath,
23 was questioned, and testified as follows:

24 THE CLERK: Please be seated. State and
25 spell your name for the record.

1 THE WITNESS: Jodi Lynn Upshaw, J-O-D-I,
2 U-P-S-H-A-W.

3 THE COURT: Ms. Upshaw.

4 Ms. Jacks.

5 MS. JACKS: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. JACKS:

8 Q. Good afternoon, Ms. Upshaw.

9 A. Good afternoon.

10 Q. How are you employed?

11 A. I'm employed as a compliance officer with
12 the State of New Mexico Corrections Department.

13 Q. And where do you work?

14 A. I work at Southern New Mexico Correctional
15 Facility.

16 Q. And back in March of 2014, did you work at
17 Southern New Mexico Correctional Facility?

18 A. Yes, I did.

19 Q. And were you employed in the same fashion,
20 or a different fashion?

21 A. No, ma'am. I was a classification officer
22 at that time.

23 Q. And can you tell the jury what it was --
24 what your duties were as a classification officer
25 back in March of 2014?

1 A. As a classification officer, we act as a
2 liaison between the inmates and all sorts of
3 sections within the facility.

4 Q. Ms. Upshaw, can you talk into the
5 microphone? The acoustics in here aren't good
6 unless you use the mic.

7 A. Can you hear me now?

8 THE COURT: If you bend it down just a
9 little.

10 A. As a classification officer, we act as a
11 liaison between the inmate and all sections of the
12 facility to include visitation, property, canteen,
13 inmate accounts, mail, attorney telephone calls;
14 just about everything.

15 BY MS. JACKS:

16 Q. And are there periodic examinations of an
17 inmate's classification -- or I should say maybe
18 reexamination?

19 A. Yes. Every six months a reclassification
20 will occur so that we can examine the inmate's
21 custody level.

22 Q. And on March 5 of 2014, did you perform a
23 reclassification of Daniel Sanchez?

24 A. Yes, I did.

25 Q. And can you tell us -- first of all, are

1 inmates classified or housed based on a score, a
2 numerical score?

3 A. Yes.

4 Q. And so is the reclassification basically
5 going through and recalculating the numerical score
6 according to a predetermined form?

7 A. Yes.

8 Q. Okay. And did you do that with Mr.
9 Sanchez on March 5th of 2014?

10 A. I did not personally do it, but I did the
11 reclassification in the system.

12 Q. Okay. And with respect to -- I just want
13 to go through how you scored him on that particular
14 date.

15 A. All right.

16 Q. So first of all, did he get points for his
17 current conviction for which he is confined?

18 A. Yes, he did.

19 Q. And how many points did he get for that?

20 MS. ARMIJO: Your Honor, I'm going to
21 object. I believe she indicated that she didn't do
22 it.

23 A. I put the reclassification into the
24 system, but I did not sit down personally with
25 Daniel.

1 BY MS. JACKS:

2 Q. Right. At some point, after you performed
3 the reclassification, did you provide it to your
4 supervisor?

5 A. Yes, I did.

6 Q. And was it your supervisor's job to then
7 sit down with Mr. Sanchez and inform him of the
8 results?

9 A. Correct.

10 Q. Okay. So I'm asking only about what you
11 did.

12 A. Okay.

13 MS. ARMIJO: Your Honor, I'm going to
14 still object to foundation, if she did not
15 personally come up with the actual classification
16 itself.

17 THE COURT: Well, she may have limited
18 testimony. But let's see if she knows something
19 that Ms. Jacks wants to elicit. If it goes beyond
20 what she's competent to testify about, you can
21 reobject.

22 Ms. Jacks?

23 BY MS. JACKS:

24 Q. I think maybe Ms. Armijo misunderstands.
25 You perform the reclassification, right?

1 A. I personally clicked on that
2 reclassification button in the system.

3 Q. Okay. But you didn't communicate the
4 results to Mr. Sanchez?

5 A. I did not personally sit down with him.

6 Q. Okay. So can we start with the -- with
7 the question of the points that he got were based on
8 his conviction for which he was incarcerated?

9 A. Yes, six points.

10 Q. And then did he also get points for being
11 involved in an incident of violence in 2005?

12 A. Correct, another six points for that.

13 Q. So we're at a total of 12 points; is that
14 right?

15 A. Yes.

16 Q. Were any points added for a history of
17 escape?

18 A. I don't believe so.

19 Q. And are there ways that points get
20 subtracted?

21 A. Yes, there is.

22 Q. And did Mr. Sanchez get points subtracted
23 because he had a clear disciplinary history for 24
24 months?

25 A. Yes, ma'am, he did.

1 Q. How many points?

2 A. It would have been a minus two.

3 Q. Okay. And did he also get points
4 subtracted because he had performed -- he had
5 satisfactory program and work performance?

6 A. Yes, he did.

7 Q. And how many points did he get subtracted
8 for that?

9 A. I believe that would have been a minus one
10 or a minus two.

11 Q. Okay. You've had a chance to review your
12 reclassification scoring form for March 5, 2014;
13 right?

14 A. Yes, I have.

15 Q. If you forgot, would you like to see a
16 copy to refresh your recollection?

17 A. Yes, please.

18 MS. JACKS: Your Honor, can I mark that to
19 refresh the witness' recollection?

20 THE COURT: You may.

21 MS. JACKS: F as in Frank, X as in X-ray,
22 is our next in order. May I approach?

23 THE COURT: You may.

24 BY MS. JACKS:

25 Q. I think what I asked you about was the

1 program -- was it program work performance?

2 A. Yes, it was.

3 Q. And having looked at that form, does that
4 refresh your recollection as to how many points he
5 got after that?

6 A. Yes, it does.

7 Q. How many did he get for that?

8 A. Minus two.

9 Q. So we started with 12, and now we're at 8;
10 is that right?

11 A. Correct.

12 Q. And then did he get another point off for
13 some reason?

14 A. Yes.

15 Q. And what was that?

16 A. For age.

17 Q. For age? Because as inmates get older
18 they pose less of a risk?

19 A. Or tend to get -- have better conduct and
20 not get written up so much.

21 Q. Okay. Now, is there also -- so we're down
22 to 7; right?

23 A. Yes.

24 Q. Now, then is there -- are there points
25 added or points available to be added if an inmate

1 has engaged in gang activity within the past 10
2 years?

3 A. Yes, those points will be added.

4 Q. And how many points could be added for
5 that?

6 A. I think the most I've seen there is two
7 points.

8 Q. And with respect to your evaluation of Mr.
9 Sanchez on March 5 of 2014, did he receive any
10 points added for gang activity within the past 10
11 years?

12 A. It was zero.

13 Q. So his total score on that date was?

14 A. Seven.

15 MS. JACKS: Thank you. I have nothing
16 further.

17 THE COURT: Thank you, Ms. Jacks.

18 Any other defendant have any direct
19 examination of Ms. Upshaw?

20 MS. DUNCAN: No, Your Honor.

21 MR. VILLA: No, Your Honor.

22 THE COURT: Ms. Armijo, do you have
23 cross-examination of Ms. Upshaw?

24 MS. ARMIJO: I do, Your Honor. Thank you.

25 THE COURT: Ms. Armijo.

1 CROSS-EXAMINATION

2 BY MS. ARMIJO:

3 Q. Good morning, Ms. Upshaw.

4 A. Good morning.

5 MS. ARMIJO: Now, I am going to mark this
6 item 784 and move for its admission without
7 objection.

8 MS. JACKS: No objection.

9 THE COURT: No objection from anyone else?

10 All right. Government's Exhibit 784 will
11 be admitted into evidence.

12 MS. ARMIJO: And may I please have the
13 Elmo?

14 (Government Exhibit 784 admitted.)

15 BY MS. ARMIJO:

16 Q. All right. Ms. Upshaw, is this the report
17 that you were referring to that you click a button
18 in the system and it's generated at your request?

19 A. Yes, that's correct.

20 Q. So all of the information that is
21 contained in here is basically input -- the result
22 of other people putting information in the system;
23 correct?

24 A. Yes, that is correct.

25 Q. You personally do not put anything in the

1 system; correct?

2 A. I'm not sure how to answer that. What
3 happens is that there is a weighted matrix, and this
4 document pulls from several different areas. For
5 instance, the number 6, for instance, clear conduct
6 for 24 months, that one will be pulled from the
7 disciplinary. But number 7 is pulled from updates
8 that I make for quarterly good time for an inmate.

9 Q. Fair enough. So some of these, like you
10 indicated, number 7, would be one of the instances
11 that you probably -- do you put that in the system
12 for everybody, or as you're individually doing each
13 of the reclassifications?

14 A. I work good time on a quarterly basis. I
15 turn that in to records. Records inputs that
16 information into the system. And then when I do the
17 reclass, it draws from that.

18 Q. Okay. So it's not something that you're
19 doing each time you're doing a reclassification on
20 an inmate. You don't go somewhere, look up the
21 information, put it in the system to be individually
22 put into a report; correct?

23 A. That is correct.

24 Q. Okay. Now, I'm going to start with number
25 1. It says "Violent incident involving weapons,

1 serious injury, or death," and that indicates that
2 it was an assault or battery with a weapon; correct?

3 A. Yes.

4 Q. Okay. And that was inputted into the
5 system, correct, by somebody other than you;
6 correct?

7 A. Yes.

8 Q. Okay. Now, I'm going to jump down to
9 number 9. It indicates no gang membership or
10 activities in the past 10 years. And it indicates
11 when you did this, 3/7/2014, no gang activities;
12 correct?

13 A. Correct.

14 Q. Now, hypothetically speaking, if this
15 incident on 11/14 of 2005, if that was a
16 gang-related incident, would he have received
17 additional points on number 9?

18 A. In theory, yes, if they would have put it
19 in the system as such.

20 Q. And my next question is, somebody would
21 have had to have put in the system that that
22 incident, again referring to number 1, was a
23 gang-related incident, and then it would have jumped
24 and added points to this number 9; correct?

25 A. That is correct.

1 Q. Okay. And then would his score have been
2 higher?

3 A. Yes, it would have.

4 Q. Do you know what the score would have
5 been?

6 A. Would you like me to estimate what a
7 disciplinary report he would have gotten in addition
8 to that?

9 Q. Yes, please.

10 A. A total estimate? The points I estimate
11 would be at least 18 to 19 or higher.

12 Q. Okay. Total score 18 or 19?

13 A. Yes, or higher.

14 Q. Okay. And at 18 or 19, what
15 classification would you be?

16 A. That would be a Level 4.

17 Q. Okay. 18 would be Level 4?

18 A. Yes.

19 Q. 19 would be Level 4?

20 A. Yes.

21 Q. At what level do you get to Level 5?

22 A. No Level 5.

23 Q. Okay. What level do you get to Level 6?

24 A. Level 6, that's --

25 Q. How many points?

1 A. It's not a point system. What it is for
2 us is a program.

3 Q. Okay. So Level 4 is the highest
4 classification somebody will get; correct?

5 A. That we have at Southern.

6 Q. Okay. And then Level 6, as you indicated,
7 is where somebody is sent for special management?

8 A. Correct, or PBMP.

9 Q. Okay. So it's separate from the
10 classification system, even though the
11 classification deals with levels to where to put
12 him; correct?

13 A. That is correct, that program is separate.

14 Q. Okay. And then, so this information as
15 you put it -- as you indicated, you are relying on
16 the information that's in the system. And if it's
17 incorrect information, then the classification would
18 be incorrect; is that true?

19 A. Absolutely.

20 Q. And then my last question for you is --
21 all right. I lost my train of thought. Let's see.

22 Okay, let's talk about this report. You
23 said that the page that we saw is your
24 classification based on the information that was in
25 there; correct?

1 A. Yes.

2 Q. And then, just so that we're clear, this
3 is the signatures indicating the date; is that
4 correct?

5 A. That is correct.

6 Q. And is that your signature?

7 A. Yes.

8 Q. Now, you indicated this is done
9 periodically?

10 A. Yes.

11 Q. And how often is it done?

12 A. For Level 2 and above, it's done every six
13 months. For Level 1, it's done one year -- every
14 year.

15 Q. Okay. And so do you know whether or not
16 Daniel Sanchez had another one done by Corrections
17 after this one?

18 A. As far as I know, he did not.

19 Q. Do you know why that is?

20 A. I think -- well, can I speculate?

21 Q. Well, did you have an opportunity to look
22 in the system to see if there was a new one?

23 A. I did not. But I had a coworker do it,
24 and there was one that was in the system, but it was
25 not approved.

1 Q. All right. Do you know if he was moved
2 out of state shortly after March 7 of 2014?

3 A. Yes.

4 Q. And if someone is out of state, are they
5 then not -- do they then not go for the
6 reclassification scoring form every six months?

7 A. No, the receiving state would implement
8 their own classification system at that point.

9 Q. And do you know if someone is in the
10 system, as far as either a gang member or suspected
11 gang member, regardless of the classification
12 scoring forms, will they be housed as decided, the
13 current policy for those gang members?

14 A. Yes. Validated suspected STGs will be a
15 Level 4.

16 Q. Okay. So even though this
17 reclassification scoring form may have somebody at a
18 Level 2, if they are in the system as a suspected or
19 validated gang member, then they will automatically
20 still be held at a minimum Level 4; correct?

21 A. That is correct.

22 MS. ARMIJO: All right. May I have a
23 moment, Your Honor?

24 THE COURT: You may.
25

1 BY MS. ARMIJO:

2 Q. Going quickly to number 1, here, where it
3 says the 11/14/2005 incident, are you aware of
4 whether or not the victim in that case was a rival
5 gang member?

6 A. No. I was not employed with the
7 Department of Corrections at that time.

8 MS. ARMIJO: All right. Thank you.

9 THE COURT: Thank you, Ms. Armijo.

10 Defendants? Ms. Jacks?

11 MS. JACKS: I just have one question.

12 THE COURT: Ms. Jacks.

13 REDIRECT EXAMINATION

14 BY MS. JACKS:

15 Q. Ms. Upshaw, I'm just asking this if you
16 know. Do you know the sentence that Mr. Sanchez was
17 serving as of March 5 of 2014?

18 A. His sentence in years?

19 Q. Correct.

20 A. Or what the crime was?

21 Q. No, what the actual sentence was.

22 A. I believe it was life.

23 MS. JACKS: Thank you. I have nothing
24 further.

25 THE COURT: Thank you, Ms. Jacks.

1 Any other defendant have any redirect?

2 All right. Ms. Upshaw, you may step down.

3 Is there any reason that Ms. Upshaw cannot
4 be excused from the proceedings? Ms. Jacks?

5 MS. JACKS: No, Your Honor.

6 THE COURT: Anybody else have an
7 objection? Ms. Armijo?

8 MS. ARMIJO: No, Your Honor.

9 THE COURT: All right. You're excused
10 from the proceedings. Thank you for your testimony.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: All right. Do the defendants
13 have their next witness or evidence?

14 MS. BHALLA: Yes, Your Honor. The defense
15 calls Bobby Delgado.

16 MR. BECK: Your Honor, may we approach?

17 THE COURT: You may.

18 (The following proceedings were held at
19 the bench.)

20 MR. BECK: Your Honor, I don't know if
21 this witness has an attorney. But I expect that
22 some of the things that he may say on direct and
23 cross-examination would incriminate him.

24 THE COURT: Was this one of the ones, Mr.
25 Villa, that we talked about earlier where I

1 scrambled and got some attorneys for some of your
2 witnesses?

3 MS. BHALLA: No, Your Honor. This is our
4 witness. I don't know what the Government thinks
5 would be criminal. He's out of custody. He's been
6 out of the custody. He was never a validated SNM
7 member. He lived in the yellow pod. He's a fact
8 witness to what he saw and what he didn't see that
9 day. I've asked him if he wants an attorney. He
10 indicated that he didn't think he needed one. He
11 was going to tell the truth about what he saw.

12 MR. BECK: He has admitted that he was an
13 SNM member. He's admitted that he was an SNM member
14 as of 2001, which means at the time period in 2014,
15 continuing until probably today, he may be an SNM
16 member, which subjects him to criminal liability
17 under the RICO Act. And I also believe that he has
18 a suspended license. And if he's asked how he got
19 here today and if he drove, that could subject him
20 to criminal liability.

21 THE COURT: Let me do this: Do you know
22 -- Mr. Villa, have you been in touch with Ms. Wild?
23 She's kind of got a little bit of a corral of some
24 attorneys.

25 MR. VILLA: We have been in touch.

1 THE COURT: Do you think if I put one of
2 those people on Mr. Delgado, it's going to
3 shortchange your people?

4 MR. VILLA: No. The ones that have been
5 appointed, we spoke to them, they spoke to their
6 clients, and after we spoke to them about what they
7 spoke to their clients about, we released their
8 clients. Those are people in custody.

9 THE COURT: Let me get in touch with
10 Ms. Wild. Let me see if I can get an attorney over
11 here, and if we can come up with another witness,
12 and let me scramble.

13 MS. BHALLA: I guess I'd want some sort of
14 proffer from the Government as to what they think
15 the issue is.

16 THE COURT: I think if they're going to
17 throw him on the stand: How did you get here, and a
18 suspended license.

19 MS. BHALLA: I can answer that question
20 already. That's not the issue. He was driven here
21 by someone else.

22 MR. CASTELLANO: I didn't hear -- he was
23 in yellow pod. If he was in yellow pod, then he was
24 SNM, or suspected SNM, right out of the gate.

25 MR. BECK: I think I just gave the proffer

1 that he admitted that he was an SNM member as of
2 2001 or 2002, and continuing until at least 2012 or
3 later. He was in the pod in 2014. So, I mean, I
4 intend to elicit that he was an SNM member in 2014
5 and may be one today, all of which subject him to
6 potential criminal liability. So I think he should
7 be appointed an attorney.

8 THE COURT: Let me protect him a little
9 bit.

10 MS. BHALLA: That's fine, Your Honor. I
11 don't have an objection to that.

12 THE COURT: Let me see if I can get
13 somebody over here rather quickly so it doesn't
14 delay you putting him on. But I don't know them
15 well enough to make a call. But I think if I got
16 attorneys to spare, maybe you can get one over here.

17 MR. BECK: I apologize for the late
18 notice. I was just provided his name and this
19 information at about 7:30 this morning, so --

20 THE COURT: Okay.

21 MS. BHALLA: I indicated on Friday that we
22 would be calling him Monday or Tuesday, Your Honor.

23 THE COURT: Okay. Do y'all have another
24 witness you can call?

25 MS. BHALLA: Yes, Your Honor.

1 (The following proceedings were held in
2 open court.)

3 THE COURT: All right. We're going to
4 hold up on Mr. Delgado for a second. So do the
5 defendants have their next witness or evidence?

6 MS. JACKS: I've got a witness, Your
7 Honor.

8 THE COURT: All right.

9 MS. JACKS: We'd call Herman Gonzales.

10 THE COURT: Mr. Gonzales, if you'll come
11 up and stand next to the witness box on my right,
12 your left, before you're seated, my courtroom
13 deputy, Ms. Standridge, will swear you in.

14 HERMAN GONZALES,
15 after having been first duly sworn under oath,
16 was questioned, and testified as follows:

17 THE CLERK: Please be seated. State and
18 spell your name for the record.

19 THE WITNESS: Herman Gonzales.

20 H-E-R-M-A-N, G-O-N-Z-A-L-E-S.

21 THE COURT: Mr. Gonzales.

22 Ms. Jacks.

23 DIRECT EXAMINATION

24 BY MS. JACKS:

25 Q. Good afternoon, Mr. Gonzales. How are

1 you?

2 A. Good. And yourself?

3 Q. How are you employed?

4 A. I'm with the State of New Mexico,
5 Department of Corrections.

6 Q. And were you so employed back in March of
7 2014?

8 A. Yes.

9 Q. And specifically I want to direct your
10 attention to March 6 of 2014. Did you -- how were
11 you employed on that particular day?

12 A. Transport officer.

13 Q. And can you tell me what a transport
14 officer does?

15 A. We take care of the -- we pick up files
16 from the medical, mental health, and the records
17 department, and we also pick up property from each
18 facility. They have a property officer that
19 inventories the property, and we put them in our
20 vehicles and, you know, put them in restraints, and
21 we secure all the files in a trailer.

22 Q. Okay. So you transport inmates?

23 A. Yes.

24 Q. And you transport things that go along
25 with inmates, like property and medical files and

1 things of that nature?

2 A. Yes.

3 Q. Okay. Now, did you have an opportunity --

4 MS. JACKS: Your Honor, I have Exhibits T1
5 through 13. And may I approach and have the witness
6 look at these?

7 THE COURT: You may.

8 BY MS. JACKS:

9 Q. Mr. Gonzales, you had an opportunity to
10 look at these earlier; right?

11 A. Yes.

12 Q. I guess last week when you were here?

13 A. Yes.

14 Q. And can you just flip through them and
15 make sure they're the same ones? And I'm going to
16 ask you if those pictures are true and accurate
17 representations of the transport vehicle and the
18 trailer that is driven to transport inmates?

19 A. Yes.

20 MS. JACKS: Your Honor, I'd move for the
21 admission of those exhibits. I think T has already
22 been admitted, but I move for the pictures -- I
23 think it's 1 through 13.

24 THE COURT: Any objection, Mr. Beck?

25 MR. BECK: No objection, Your Honor.

1 THE COURT: So let me make sure I've got
2 the right numbers. It's Defendants' Exhibits T1
3 through T13.

4 MS. JACKS: That's correct. And Exhibit T
5 was admitted earlier.

6 THE COURT: All right. So Defendants'
7 Exhibits T1 through T13, inclusive, without gap, are
8 admitted into evidence.

9 MS. JACKS: And can we put T1 up for the
10 jury, please?

11 THE COURT: You may.

12 (Defendants' Exhibits T1 through T13
13 admitted.)

14 BY MS. JACKS:

15 Q. Now it will be on the screen. So Mr.
16 Gonzales, showing you what's been marked as T1, can
17 you tell us what that's a photograph of?

18 A. Transport vehicle and transport trailer.

19 Q. And these -- was that taken at a
20 particular -- outside a particular penal
21 institution? Do you know? Do you recognize the
22 location?

23 A. That looks like Central New Mexico
24 Correctional Facility.

25 Q. Okay. And on March 6 of 2014, did you

1 pick up the vehicle or start your trip that day from
2 Central New Mexico Correctional Facility?

3 A. Yes.

4 Q. And where is that located?

5 A. Los Lunas.

6 Q. Los Lunas, New Mexico?

7 A. Yes.

8 Q. So just a little south of Albuquerque?

9 A. That's correct.

10 Q. Can we have T2? What are we looking at
11 here, in T2?

12 A. That's the other side of the vehicle
13 where -- one side of the vehicle has a separate part
14 of a cage to the transport vehicle.

15 Q. When you drive a transport, do you go
16 alone, or do you go with a partner?

17 A. We go with another officer.

18 Q. And where do you sit in the white van?

19 A. Front passenger.

20 Q. And your partner on March 6, 2014, was the
21 driver?

22 A. Yes.

23 Q. And then the side compartment that we see
24 here, who is put in that compartment?

25 A. Usually segregated inmates.

1 Q. How many compartments are in a transport
2 van? Are they all the same?

3 A. No. Sometimes they're open bay, which is
4 a full bay. This one looks like a split bay with a
5 third bay on the side.

6 Q. On the trailer that we see behind the van,
7 what is that used for?

8 A. Transport the property and the files.

9 Q. Can we go to T3? What do we see here?

10 A. That's the front of the van.

11 Q. So that's where the correctional officers
12 like yourself would be seated?

13 A. Yes.

14 Q. And then is it actually walled off from
15 the compartments where the inmates are placed?

16 A. Actually, to your left is the cage where
17 we have the inmates inside, secured.

18 Q. Can you see from the passenger
19 compartment, where you ride, back into what you are
20 calling the cage?

21 A. There is a small window in the center of
22 the cage.

23 Q. That you can see through?

24 A. Yes, to the back.

25 Q. And with respect to the compartments where

1 the inmates are riding, do they have windows?

2 A. No. Usually they have the back doors with
3 the little holes on the back, just like these ones
4 on the side, I'm sure.

5 Q. Let's look at T4. Do you see the window
6 that we just talked about in that picture?

7 A. Yes.

8 Q. And can you just circle that on the
9 screen? Just use your finger. It will mark it.

10 A. (Witness complies.)

11 Q. So between the two seats?

12 A. Yes.

13 Q. Okay. T5, please. What's this a view of,
14 Mr. Gonzales?

15 A. That's a side cage for the inmates where
16 we secure them.

17 Q. So the inmates would be placed in there
18 and seated on that -- what looks like a metal bench?

19 A. Yes.

20 Q. And then there's two doors that are the
21 doors to the vehicle. Is there, then, a separate
22 door to actually lock the inmates in that area?

23 A. Yes. It's the one to the right.

24 Q. Can you just circle that?

25 A. (Witness complies.)

1 Q. So that door closes first, and then the
2 door of the vehicle closes over it?

3 A. Yes.

4 Q. And it looks like, at least on the door on
5 the left, that there might be a window?

6 A. Yes.

7 Q. Is the window covered with something?

8 A. It's painted over white.

9 Q. Okay. And so that's so that the inmates
10 can't see outside?

11 A. Yes.

12 Q. Can we have the next one? I think T6 is
13 the next one. What is this a view of, Mr. Gonzales?

14 A. The side cage.

15 Q. Just a more close-up view?

16 A. Yes.

17 Q. Can we have T7, please? What's this?

18 A. That's the back entrance of the cage.

19 Q. So in this particular transport vehicle,
20 there are two compartments that are accessible in
21 the back?

22 A. Yes, that's a split bay right there.

23 Q. And do you recall whether the vehicle you
24 drove on March 6 -- or that you rode in on March 6,
25 2014, had that split bay or whether it just had one

1 big compartment in the back?

2 A. I don't recall. But usually it's a full
3 bay or a separate bay when it comes to the
4 segregated inmates.

5 Q. Can we have T8? Can you explain what
6 we're looking at here?

7 A. That's one side of the cage. That's
8 separated to the other side.

9 Q. So we're looking into the right side of
10 the cage.

11 A. Yes.

12 Q. The back -- the back cage?

13 A. Yes.

14 Q. And then it looks like we might see -- on
15 the left side, it looks like there is a little bit
16 of a view of the left side of that cage; is that
17 right?

18 A. Yes.

19 Q. Okay. Next is 9. What are we looking at
20 here?

21 A. That's the back entrance of the van, and
22 then the step are the inmates step in, and then the
23 trailer in the back.

24 Q. Okay. And that is always the way that the
25 inmates' property and the medical records and things

1 are carried along with you, in the trailer on the
2 back?

3 A. Yes.

4 Q. And the trailer is inaccessible to the
5 inmates as they're traveling; is that right?

6 A. Yes, that's correct.

7 Q. Okay. T10. What do we see here?

8 A. The transport trailer.

9 Q. T11? Describe what this is.

10 A. That's the inside of the transport
11 trailer.

12 Q. Okay. And tell me how the inmates'
13 property is packaged for transport.

14 A. We usually put it all the way to the back,
15 which is on the inside, and then the property -- and
16 then the files are closer to the door.

17 Q. Okay. And the property, I mean, obviously
18 it's not in suitcases. How is it separated?

19 A. Usually in trash bags with their names --
20 the inmate's name and number on them.

21 Q. And would the bags -- can you see through
22 the bags, or no?

23 A. Sometimes, yes.

24 Q. Okay. Depending on the bag?

25 A. Depending on the bag.

1 Q. Okay. And the person responsible for
2 packing up the bag, who is that?

3 A. That's the property officers at each
4 facility, where we pick up the facility -- property,
5 and then we transport it to another facility, and
6 then they go through it and inventory that property.

7 Q. Okay. So if you pulled up to a prison to
8 pick up some inmates, would the inmates and the
9 property already be set out for you?

10 A. Yes.

11 Q. And so what would you do with respect to
12 the inmate? Would you move them to the van in some
13 fashion?

14 A. Yes.

15 Q. And then what would you do with respect to
16 the property?

17 A. We would store them in the back of the
18 trailer.

19 Q. And when you get to the receiving
20 facility, the place where you're taking the inmate
21 and the property, what do you do with the property?

22 A. We give it to the property officer at the
23 receiving facility.

24 Q. Okay. What if the property officer has
25 gone home for the day?

1 A. They secure it in a separate cage in the
2 back, or they get the intakes.

3 Q. And wait for the property officer to come
4 in?

5 A. Or the next day.

6 Q. And can we have the next in order, is that
7 T12? What are we looking at here?

8 A. That's the door to the transport trailer.

9 Q. Okay. It looks like that is a lock
10 hanging off the back of the door?

11 A. Yes.

12 Q. Do you affix -- every time after you load
13 property or files into the trailer, do you affix the
14 trailer with a lock?

15 A. We secure the lock.

16 Q. Why is that?

17 A. So that we don't lose the property or the
18 files.

19 Q. All right. And finally, T13. What do we
20 see here?

21 A. Looks like a secured door with a lock on
22 the trailer.

23 Q. Now -- thank you very much. Can we have
24 Exhibit T, the documents? You had a chance to
25 review some documents a few days ago, didn't you,

1 regarding your transport?

2 A. Yes.

3 Q. Tell me -- just give us an idea of what
4 your day is like when you're transporting inmates
5 around.

6 A. Just a long day on the road.

7 Q. Okay. What time do you generally start?

8 A. We start at 5:00 a.m. in the morning.

9 Q. And you start from Central New Mexico
10 Correctional Facility?

11 A. Yes.

12 Q. And then where do you go?

13 A. Wherever we're assigned to go, transport
14 the inmates from one facility to the next.

15 Q. And when do you -- do you end up at the
16 end of the day back at Central New Mexico
17 Correctional Facility?

18 A. Yes.

19 Q. So if you start at 5:00 in the morning,
20 how long can your day last?

21 A. Usually 16 hours to 24-hour days.

22 Q. So you drive all over the state of New
23 Mexico when you're a transport officer?

24 A. Yes.

25 Q. And do you visit numerous different penal

1 facilities over the course of that day?

2 A. Just the ones that we're assigned to
3 transport inmates to.

4 Q. Now, specifically, are you -- as you're
5 transporting inmates, are you required to keep some
6 paperwork about where you go, and when you go there,
7 and what sort of times of the day that you arrive at
8 various places?

9 A. Yes, transport log.

10 Q. That's what it's called, a transport log?

11 A. Yes.

12 Q. And do you also keep a list of the inmates
13 that are on the transport?

14 A. That's a transport list. That's put out
15 the day before.

16 Q. Okay. Now, you had a chance a few days
17 ago to look at what's been marked as Defendants'
18 Exhibit T. Did you recognize that as your transport
19 log and other documents that were completed in
20 regards to your transport on March 6, 2014?

21 A. This one that's on the screen?

22 Q. No -- oh, yeah, I didn't realize it was up
23 there. You looked through it the other day; right?

24 A. Yes.

25 Q. And did those look like your transport

1 documents from March 6, 2014?

2 A. This is the sheet that the supervisor
3 holds on to that day.

4 Q. Okay. We're looking at page 1 of Exhibit
5 T. So are all the people listed there assigned to
6 transport inmates on that particular day?

7 A. There's a few of them that are not on
8 transports.

9 Q. Like the sergeant coordinator?

10 A. Yes.

11 Q. Okay. Do you see your name listed here?

12 A. Number 7.

13 Q. Okay. Can we go to the next page, please?
14 Can you tell us what this is, Mr.

15 Gonzales? I see your name in the upper-right
16 corner.

17 A. That is the transport time log.

18 Q. And can you describe to us, what -- can
19 you describe to us how to read this?

20 A. A transport number, that's the number that
21 they issue out from the Santa Fe. Then the officers
22 who are assigned to this transport are on the right.
23 It's an RDC transport. We started at 5:00, and then
24 we departed at 0815 for Central.

25 Q. So you got to Central at 5:00, but you

1 actually drove out of there at 8:15?

2 A. Yes.

3 Q. Got it. I see that. In the upper --
4 that's in the upper right-hand corner?

5 A. Yes, right here.

6 Q. Okay.

7 A. And then the transport return was right
8 here.

9 Q. 2245?

10 A. Yes.

11 Q. So that's 10:45 at night?

12 A. Yes. That's the time we returned back to
13 the facility.

14 Q. Okay. So -- and then I see a facility
15 departure over on the left of that. What is that,
16 2345?

17 A. That's the departure that we leave the
18 facility and go home.

19 Q. So you start at 5:00 a.m. and went home at
20 11:45 at night?

21 A. Yes.

22 Q. Let's go down -- and I would like you to
23 describe what this facility pickup and designation
24 chart shows us.

25 A. Okay. CNMCF, we had six.

1 Q. That's Central New Mexico Correctional
2 Facility?

3 A. Yes.

4 Q. So you picked up six inmates?

5 A. Yes.

6 Q. And then what happened?

7 A. We drove over to Western New Mexico
8 Correctional Facility.

9 Q. Okay.

10 A. We dropped off three inmates.

11 Q. Okay.

12 A. And we picked up two inmates from the same
13 facility.

14 Q. And can you circle the place where it
15 shows that you picked up two?

16 A. (Witness complies.)

17 Q. So what was your next stop?

18 A. Our next stop was PNM 5.

19 Q. And what happened there?

20 A. We picked up two.

21 Q. And dropped off -- okay, and dropped off
22 zero?

23 A. Dropped off zero, yes.

24 Q. Okay. And what happened after you were at
25 PNM Level 5?

1 A. We departed to Level 6, PNM.

2 Q. Okay. And what happened at PNM Level 6?

3 A. We picked up two.

4 Q. Got it. And what about dropping off,
5 zero?

6 A. Zero.

7 Q. And where did you go after PNM Level 6?

8 A. Southern New Mexico Correctional Facility
9 here in Las Cruces.

10 Q. And what happened there?

11 A. We dropped off nine inmates, and we picked
12 up four inmates.

13 Q. Okay. And then where did you go?

14 A. Back to Central New Mexico Correctional
15 Facility.

16 Q. And dropped off the four guys?

17 A. Dropped off four.

18 Q. Okay. Can we go to the next page, please.

19 I'm sorry, I didn't realize -- I thought -- what's
20 at the bottom of this page?

21 A. The star says, "Due to late departure,
22 emergency count."

23 Second line says, "PNM 6, medical files,
24 Inmate Montoya, did not know was on transport."

25 Q. What does that mean? He didn't --

1 A. That's our notification for our times up
2 on the top.

3 Q. Okay. But what is the medical file for
4 inmate Montoya didn't know was on transport?

5 A. Medical didn't know that the inmate was on
6 the transport.

7 Q. I see. Okay. And then I think you had --
8 I see where you have the mileage, the starting and
9 ending mileage for the day?

10 A. Yes.

11 Q. Okay. Can we go to the next page?

12 All right. Can you tell us what this page
13 is, Mr. Gonzales?

14 A. That's our daily transport log.

15 Q. All right. And does that reflect the
16 times that you made all your stops?

17 A. Yes.

18 Q. And I guess I just have a question -- just
19 a general question. Do you stop for inmates to use
20 the restroom or to eat?

21 A. No.

22 Q. So once they're on the transport, they
23 don't get off until they get to the new penal
24 institution?

25 A. That is correct.

1 Q. Okay. So let's start with -- looking at
2 this log, what time did you arrive at the
3 Penitentiary of New Mexico? And I think you told us
4 you started at the Level 5 facility; right?

5 A. Okay. Now, repeat that one again?

6 Q. What time on March 6, 2014, did you arrive
7 at the Penitentiary of New Mexico?

8 A. At PNM?

9 Q. Yes. You can mark it with your finger.

10 A. It says 12:10 in the afternoon.

11 Q. Okay. And that's at the Level 5 facility?

12 A. Yes.

13 Q. And then you were there for how long?

14 A. Looks like 50 minutes.

15 Q. From picking up two inmates?

16 A. Yes.

17 Q. And then where did you go after you picked
18 up those two inmates from Level 5?

19 A. En route to PNM 6.

20 Q. So that's just basically down the road --
21 across the way; right?

22 A. Yes.

23 Q. And then at -- so you arrived there at
24 what time?

25 A. We arrived at PNM 6 at 1:05 p.m.

1 Q. And you left there at what time?

2 A. We departed at 2:00 p.m.

3 Q. I noticed that these times are actually in
4 regular time, not military time; right?

5 A. Yes.

6 Q. And while you're driving -- I see some
7 entries at 3:00, 3:55, 4:00. Is there something
8 that you're required to do while you're on the road?

9 A. We have to put down that the transport is
10 secure and safe. And we also notify our facility
11 that we're okay on that time.

12 Q. So you check in, basically, every hour?

13 A. Yes.

14 Q. And you try to do it on the hour, it looks
15 like?

16 A. Yes.

17 Q. Now, can you tell me, according to this
18 log, what time did you arrive at Southern New Mexico
19 Correctional Facility?

20 A. 6:15 p.m.

21 Q. Okay. And that was for dropping off the
22 nine inmates?

23 A. Yes.

24 Q. And picking up other inmates; right?

25 A. Yes.

1 Q. How long were you there?

2 A. 45 minutes.

3 Q. Okay. And you departed, it says, what
4 time?

5 A. 7:30 p.m.

6 Q. Now, when you dropped off the inmates at
7 Southern New Mexico Correctional Facility, where do
8 you drop them off at?

9 A. We take them in through the sally port --

10 Q. Okay.

11 A. -- and into the intake department in the
12 sally port.

13 Q. So is there -- you take them physically
14 from the transport van into an intake area, which
15 has a cell or numerous cells?

16 A. Separate cages, yes.

17 Q. And you place them one in each separate
18 cage?

19 A. Yes.

20 Q. And then what do you -- what did you do
21 with the property that belonged to those inmates?

22 A. We took them inside to the intake. And
23 the officer that was in there, the receiving
24 officer, would either put it in the cage, in a
25 separate cage, and lock it up.

1 Q. Okay. So lock it up separately from the
2 inmates?

3 A. If the property officer is not there, yes.

4 Q. Okay. Do you remember on March 6 of 2014,
5 whether the property officer was there when you got
6 there at 6:15 at night?

7 A. No, I don't recall.

8 Q. Okay. Can we go to the next page? There
9 we go. That's the end of the log, huh?

10 A. Yes.

11 Q. And that shows that you got back to
12 Central New Mexico Correctional Facility at 10:45
13 p.m.?

14 A. Yes.

15 Q. And you made an entry for 11:15 p.m.?

16 A. That's when we departed the sally port at
17 Central New Mexico Correctional Facility in Los
18 Lunas.

19 Q. So at 10:45 you drove in and you went to
20 the sally port to unload the remaining inmates you
21 had?

22 A. Yes.

23 Q. And that took about a half hour?

24 A. Yes.

25 Q. And then you left?

1 A. Yes.

2 Q. Okay. Can we see the next page?

3 Tell us what this is, Mr. Gonzales.

4 A. This is a vehicle inspection sheet.

5 Q. And are you required to do that prior to
6 leaving the facility?

7 A. Every day.

8 Q. Okay. Before you transport inmates?

9 A. Yes.

10 Q. Can we see the next page?

11 Tell us what this is, just in general.

12 A. That's a list of inmates that are being
13 transported on that day.

14 Q. And it gives you where the inmates are
15 supposed to be picked up?

16 A. From, and to where.

17 Q. And where they're supposed to be dropped
18 off. Okay. We'll go ahead and flip through these
19 next few pages.

20 Let's see if we -- so is there an entry,
21 Mr. Gonzales, that would be from PNM Level 5 to
22 Southern New Mexico Correctional Facility?

23 A. Yes, down on the bottom.

24 Q. Okay. And which inmates on March 6, 2014,
25 which inmates did you transfer from PNM Level 5 to

1 Southern?

2 A. Inmate Urquizo and Inmate Varela.

3 Q. And can we go -- there we go, thank you.

4 And let's look at -- is there somebody
5 that you picked up at PNM Level 6 and transported to
6 Southern New Mexico Correctional Facility?

7 A. Inmate Enriquez.

8 Q. Reynaldo Enriquez?

9 A. Yes.

10 Q. Okay. Thank you. We can go to the next
11 page. We can keep the next page please, thanks.
12 That's a long list. Can we turn the page?

13 Okay. Tell us what we're looking at here,
14 Mr. Gonzales.

15 A. That's our travel log from the start of
16 the mileage, the date, from what facility to the
17 next facility. And then on the bottom is our gas
18 receipt log-ins.

19 Q. So you have to stop for gas?

20 A. Yes.

21 Q. And when you stop for gas, do you let the
22 inmates out?

23 A. No. They stay secured in the vehicle in
24 the cage.

25 Q. So what the inmates that are in the cage

1 know is that the vehicle is stopped; they just don't
2 know where it's stopped?

3 A. Yes.

4 Q. Or why it's stopped?

5 A. Yes.

6 Q. Could we have the next page? Those look
7 like the gas receipts?

8 A. Yes.

9 THE COURT: Ms. Jacks, would this be a
10 good place for us to take our lunch break?

11 MS. JACKS: Sure. That's fine. Thank
12 you.

13 THE COURT: All right.

14 Before we go to lunch, I'm going to remind
15 the jury of a few things that are especially
16 important. Until the trial is completed, you're not
17 to discuss this case with anyone, whether it's
18 members of your family, people involved in the
19 trial, or anyone else, and that includes your fellow
20 jurors.

21 If anyone approaches and tries to discuss
22 the trial with you, please let me know about it
23 immediately. Also, you must not read or listen to
24 any news reports of the trial. Again, don't get on
25 the internet and do any research for purposes of

1 this case.

2 And finally, remember that you must not
3 talk about anything with any person who is involved
4 in the trial, even if it doesn't have anything to do
5 with the trial.

6 If you need to speak with me, simply give
7 a note to one of the Court Security Officers or
8 Ms. Standridge. You'll probably hear these this
9 afternoon and then I'll tail off for the rest of the
10 week. But do keep them in mind each time we take a
11 break, even if I don't repeat them.

12 All right. We'll be in recess for about
13 an hour.

14 All rise.

15 (The jury left the courtroom.)

16 THE COURT: All right. Ms. Wild is
17 working on getting Mr. Delgado an attorney over
18 here. So I'll keep you posted after lunch.

19 All right. We'll be in recess for about
20 an hour.

21 MS. JACKS: So Mr. Gonzales should come
22 back about 2:15?

23 THE COURT: Yes. Why don't you be back at
24 2:15.

25 (The Court stood in recess.)

1 THE COURT: All right. Let's go on the
2 record.

3 Based on the representations that Ms.
4 Bhalla was making about Mr. Delgado, and that you do
5 want to call Mr. Delgado today because he needs to
6 get back to Espanola, I went ahead and made the
7 appointment for Edith Reeves to represent him. So
8 he is -- she is out with him now.

9 MS. BHALLA: Yes, Your Honor.

10 THE COURT: Now, I've got two more
11 attorneys and I've got two more witness. What I
12 need -- I don't have much room for margin. You're
13 positive, Mr. Villa, Ms. Fox-Young, that you're
14 going to call Mr. Valenzuela as well as Mr. Clark.

15 MR. VILLA: So Mr. Clark is already
16 represented. His attorney is already here. I think
17 the two that we have issues that need to see lawyers
18 would be Mr. Valenzuela and Mr. Montano. And I
19 suppose after they meet with their clients and we
20 meet with them, we may alter our thinking. But
21 right now, we plan to call them.

22 THE COURT: Well, that sounds iffy. Who
23 is representing Clark?

24 MR. VILLA: Steve Hosford. He's here.
25 He's a co-defendant in this case, Your Honor, trial

1 2 witness.

2 THE COURT: All right. So who do I -- is
3 it -- okay, well, are you telling me you can't make
4 a determination whether you're going to call Mr.
5 Valenzuela until I get him an attorney?

6 MR. VILLA: No, we fully intend to call
7 him.

8 THE COURT: Who are you going to call
9 after -- do y'all want to finish Mr. Gonzales, or do
10 you want to get Mr. Delgado on and off, so he can
11 get back up to Espanola?

12 MS. JACKS: Your Honor, we'd like to
13 finish Mr. Gonzales.

14 MR. VILLA: That's fine.

15 MS. JACKS: I don't anticipate much
16 longer.

17 THE COURT: Does that work for you, Ms.
18 Bhalla?

19 MS. BHALLA: It does, Your Honor. And it
20 gives him a chance to speak to the lawyer, too.
21 They just started speaking now.

22 THE COURT: Who is the next witness, then?

23 MR. VILLA: Well, Your Honor, we were
24 going to go out of turn. Because Mr. Delgado
25 couldn't testify, we were going to call Mr. Clark

1 next, because he's got an attorney. His attorney
2 has already met with him, everything has been fine.
3 So we would call him next.

4 And then I guess, if Mr. Delgado is
5 available and ready to testify at that point, we can
6 call him. And if not, we have our doctor available.
7 But that's going to take quite a bit of time,
8 probably the rest of the day.

9 THE COURT: I'm trying to figure out when
10 to appoint Mr. Jennings, if that's who's going to go
11 with Mr. Valenzuela, when to do that.

12 MR. VILLA: I think he should go see him
13 now. He's downstairs on a lockup on a writ.

14 THE COURT: I'm taking your word you're
15 going to call him.

16 MR. VILLA: I am, I'm going to call him.

17 THE COURT: Because I'm about to appoint
18 him an attorney. Is that more important than
19 Montano?

20 MR. VILLA: Yes.

21 THE COURT: All right. Mr. Jennings,
22 you're appointed to represent Mr. Valenzuela. Why
23 don't you get down there and go ahead and meet with
24 him, okay?

25 MR. JENNINGS: Yes, sir.

1 THE COURT: Thank you, Mr. Jennings.

2 MS. ARMIJO: Your Honor --

3 THE COURT: Let me find out -- I must be
4 off one. I don't have somebody for Mr. Montano,
5 unless there is somebody else here in the courtroom.

6 THE CLERK: We don't have another attorney
7 yet.

8 MR. VILLA: He's represented by a state
9 public defender in Albuquerque. We've explained to
10 her -- you know, we explained to her a couple of
11 weeks ago what we were doing.

12 THE COURT: All rise.

13 (The jury entered the courtroom.)

14 THE COURT: All right. Everyone be
15 seated. All right.

16 Mr. Gonzales, I'll remind you that you're
17 still under oath.

18 THE WITNESS: Yes.

19 THE COURT: Ms. Jacks, if you wish to
20 continue your direct examination of Mr. Gonzales.

21 MS. JACKS: Thank you. I was almost done,
22 if we can get the exhibit back up here.

23 BY MS. JACKS:

24 Q. I just want to talk to you about the last
25 two pages of that Exhibit T, Mr. Gonzales. So one

1 of the things that you were carrying in that trailer
2 were some medical files; right?

3 A. Yes.

4 Q. And are there specific forms to establish
5 chain of custody for the medical files?

6 A. What was that again?

7 Q. I said, are there specific forms that you
8 have to fill out to establish chain of custody for
9 the medical files?

10 A. It's a medical record receipt.

11 Q. I think that's what it is. Can you see
12 it? Do you need it enlarged?

13 A. It's up on the top, Medical Records
14 Receipt.

15 Q. Okay. So you carried some medical records
16 for inmates Lupe Urquizo and Mauricio Varela?

17 A. Yes.

18 Q. And if we can just go to the bottom of the
19 page. So I see that -- is that your signature next
20 to Transport Officer 1?

21 A. Yes.

22 Q. And then, do you actually hand it to
23 somebody at Southern New Mexico Correctional
24 Facility that has to sign for it?

25 A. The medical staff.

1 Q. And so that's a signature there from one
2 of the people on the medical staff?

3 A. Yes.

4 Q. Okay. That's for the medical file, right?

5 A. Yes.

6 Q. Okay. That's handled in a different way
7 than the inmate property that's in the plastic bags?

8 A. Yes, it's in a secured bag.

9 Q. The inmate property?

10 A. No, the --

11 Q. The medical stuff?

12 A. -- the medical stuff.

13 Q. It's in a secure bag, and you have to
14 actually physically hand it over to a person who has
15 to account for it?

16 A. Yes.

17 Q. And then the question I was asking you, is
18 that's handled differently than the inmate property?

19 A. Yes.

20 Q. Okay. With the inmate property, do you
21 have to get a signature from somebody that receives
22 it?

23 A. Usually, we get a receipt from the
24 property officer.

25 Q. Okay. Did you see a receipt for the

1 property in this package of material?

2 A. No.

3 Q. Can we go to the last page? And can you
4 tell me what this is, Mr. Gonzales?

5 A. This is a mental health records.

6 Q. So those are separate records, different
7 from the medical records?

8 A. Yes. They're also sealed in a separate,
9 secure bag.

10 Q. Okay. And you also have to get a chain of
11 custody signature to drop those off?

12 A. Yes.

13 Q. And if we look at the bottom of this form,
14 it looks like -- it looks like Alex Ramirez, a
15 sergeant at the Southern New Mexico Correctional
16 Facility, signed for that?

17 A. Yes.

18 MS. JACKS: Thank you. I have nothing
19 further.

20 THE COURT: Thank you, Ms. Jacks.

21 Do any of the other defendants have direct
22 examination of Mr. Gonzales?

23 MS. DUNCAN: No, Your Honor.

24 THE COURT: All right.

25 Mr. Beck, do you have cross-examination of

1 Mr. Gonzales?

2 MR. BECK: Yes, Your Honor.

3 THE COURT: Mr. Beck.

4 CROSS-EXAMINATION

5 BY MR. BECK:

6 Q. Mr. Gonzales, you don't -- you don't
7 inventory an inmate's property when you're
8 transporting them, do you?

9 A. No, it's the property officer at the
10 facilities.

11 Q. And you don't confiscate their property,
12 the inmate's property?

13 A. No, I don't.

14 Q. And you don't look through the inmate's
15 property on the transport; correct?

16 A. No.

17 Q. I'd like to look at what's been admitted
18 as Defendants' Exhibit T. I want to go to the
19 second page of that document. Can we zoom out at
20 all? There we go.

21 And so, down here, I'm looking at the
22 comments in this portion of the page. Do you
23 remember talking about those comments?

24 A. Yes.

25 Q. And I think the first comment is, "Due to

1 late departure, EME count," right?

2 A. Emergency count, yes.

3 Q. And it looks like it's got a star next to
4 it. What is that referring to?

5 A. That's just our notes for when we return
6 back to our supervisor.

7 Q. So what is this saying, "Due to late
8 departure, emergency count?" Where did you depart
9 late from?

10 A. It should state on the log.

11 Q. Okay. But it doesn't state on this form?

12 A. No.

13 Q. And then the second entry there, "PNM 6
14 med files, inmate Montoya"; is that right?

15 A. Yes.

16 Q. It says, "Didn't know was on transport,"
17 right?

18 A. Medical didn't know.

19 Q. So Medical didn't know that these files
20 were on the transport?

21 A. Right.

22 Q. And then I think you talked about with
23 Ms. Jacks, on direct, you talked about all the
24 important procedures that you, as the transport
25 officers in the correctional facilities, go through

1 for these medical records; right?

2 A. Yes.

3 Q. But Medical didn't know that these files
4 were on the transport that day?

5 A. No.

6 Q. I think on direct you said that with the
7 vans on March 7, 2014, you didn't recall whether
8 there were two bays or one bay in the back. Do you
9 remember that?

10 A. No, I don't.

11 Q. You don't remember saying that earlier, or
12 you don't remember on March 7?

13 A. I don't remember saying that earlier.

14 Q. Okay. And to be fair, you also don't
15 remember from March 7, whether there were two bays
16 or one bay on the transport van; right?

17 A. That's correct.

18 Q. And then she asked you about property,
19 what you do with the property in your transport when
20 you arrive at the facility. Do you remember her
21 asking you about that?

22 A. Yes.

23 Q. And I think, in response to her question,
24 you said -- do you remember when she asked you about
25 March 7, 2014, do you remember that, about what you

1 did with the property?

2 A. Yes.

3 MS. JACKS: I thought I asked about March
4 6. I'm sorry.

5 MR. BECK: That's right.

6 BY MR. BECK:

7 Q. I think Ms. Jacks is right. March 6,
8 2014; that was the date of this transport; right?

9 A. Yes.

10 Q. And I think you said that you either put
11 it in a cage, or you gave it to the property
12 officers. Do you remember that?

13 A. We gave it to the property officer or
14 whoever the receiving officer is.

15 Q. All right. But you don't remember doing
16 that on March 6, 2014, do you?

17 A. No.

18 Q. Is it fair to say that you don't remember
19 these events of the transport on March 6 of 2014, at
20 all?

21 A. No.

22 Q. Then, if we go to the last two pages in
23 this document, Exhibit T, we'll start with the
24 second to the last page, which is a medical records
25 receipt.

1 It sounds like this medical records
2 receipt is a specific document required for
3 Corrections because the records are an inmate's
4 records, is that -- medical records; is that fair to
5 say?

6 A. Yes.

7 Q. All right. And then the next page, this
8 is the mental health record receipt from the
9 transport; is that right?

10 A. Yes.

11 Q. And is it fair to say that this special
12 receipt is there because you're dealing with mental
13 health records of inmates?

14 A. Yes.

15 Q. And there is no similar specific record
16 receipt in T, here, for just regular inmate
17 property, is there?

18 A. No.

19 MR. BECK: Nothing further, Your Honor.

20 THE COURT: Thank you, Mr. Beck.

21 Any defendants have redirect of Mr.
22 Gonzales?

23 MS. JACKS: No, Your Honor.

24 THE COURT: All right. Mr. Gonzales, you
25 may step down.

1 Is there any reason Mr. Gonzales cannot be
2 excused from the proceedings?

3 MS. JACKS: No.

4 THE COURT: Mr. Beck?

5 MR. BECK: No, Your Honor.

6 THE COURT: Not hearing any objection, you
7 are excused from the proceedings. Thank you for
8 your testimony.

9 THE WITNESS: Thank you.

10 THE COURT: All right. Do the defendants
11 have their next witness or evidence?

12 MR. VILLA: Yes, Your Honor. Mr. Perez
13 calls Benjamin Clark.

14 MS. DUNCAN: Your Honor, can we approach?

15 THE COURT: You may.

16 (The following proceedings were held at
17 the bench.)

18 MS. DUNCAN: Your Honor, I understand that
19 Mr. Perez is calling Mr. Clark to testify on a very
20 narrow issue about a phone conversation he had with
21 Billy Cordova regarding the Sammy Griego murder --
22 Sammy Chavez murder.

23 Mr. Clark was on the Government's witness
24 list. They took him off. He makes a statement
25 about a bunch of different topics, including

1 Mr. Baca. I'd ask the Court that his
2 cross-examination by the Government be limited to
3 the scope of the direct, and not be allowed to get
4 into information about Mr. Baca which is not going
5 to come up in the direct examination and has nothing
6 to do with Sammy Chavez.

7 THE COURT: I'll fairly apply the American
8 Rule. You need to get anything out of him other
9 than this one conversation?

10 MR. BECK: Yeah, I think a couple of
11 things. I think we'll need to get in that he was
12 SNM. I think we'll need to get into some of the
13 things that he did for the organization. I think
14 that's important, because he relayed information as
15 to an SNM murder, relayed information of who else
16 was involved in the murder, and the only reason we
17 have this information, we had this conversation with
18 Billy Cordova at all, was because he was an SNM
19 member.

20 THE COURT: Do you need to get anything in
21 about Mr. Baca in your questioning?

22 MR. BECK: I think it relates to his
23 position at the time, his position.

24 THE COURT: When you say "his," are you
25 talking about --

1 MR. BECK: Mr. Clark's position at the
2 time. He was in the --

3 THE COURT: What would you be saying about
4 Mr. Baca?

5 MR. BECK: Well, I think Mr. Clark would
6 talk about why he decided to leave the gang and
7 cooperate. And one of the main reasons was when Mr.
8 Baca came back from out of state, from Nevada, the
9 SNM began taking up arms and stabbing and killing
10 more people. So I think Mr. Baca was instrumental
11 in Mr. Clark's decision to plead guilty and
12 cooperate with the Government.

13 MR. VILLA: Your Honor, I don't intend to
14 ask him why he cooperated with the Government, what
15 his decision was. I only intend to ask him whether
16 he has currently entered into an agreement with the
17 Government and whether Billy Cordova told him he
18 murdered Sammy Chavez.

19 THE COURT: I guess you're impeaching him;
20 correct?

21 MR. BECK: Correct.

22 THE COURT: Once he takes that stand, his
23 credibility is at issue, his bias and prejudice. Is
24 anything that he just outlined particularly
25 troubling to you?

1 MS. DUNCAN: All of it, Your Honor. This
2 is substantive evidence against Mr. Baca. It was
3 not put on in the Government's case. We'd ask for a
4 severance or a mistrial if this is going to come in.
5 It's a collateral point for Mr. Perez.

6 MR. BECK: I will note that Mr. Acee,
7 Special Agent Acee, testified yesterday that Ben
8 Clark told him that Mr. Cordova told Ben Clark that
9 he killed Sammy Chavez. So that testimony is
10 already in here.

11 THE COURT: Well, I'm not inclined to cut
12 back the Government. If you're just using this
13 stuff to -- using him to get more information, you
14 remember, you've got to defend this thing on appeal.
15 And if they're going to use this as reasons why I
16 should have severed, you've got to ask yourself, is
17 it worth it? Because, you know, they're going to
18 use this potentially against my opinion to not
19 sever.

20 MR. BECK: Sure, Your Honor.

21 THE COURT: So if you really need it to
22 impeach him, you know, I'll probably have to let you
23 do it. But you may get a real victory here, but you
24 may get a danger in the war down the road, if you
25 get convictions here and they say I should have

1 severed the case originally.

2 MR. BECK: Sure.

3 MR. VILLA: Your Honor, I don't think that
4 the reasons for his decision to cooperate with the
5 Government have anything to do with whether his
6 testimony about what Billy Cordova told him is
7 credible or not. I'm not asking him why he's
8 cooperating or not.

9 Did Billy Cordova make the statement to
10 you, yes or no? If the Government doesn't like the
11 answer, they can impeach him. Why he cooperated
12 isn't --

13 THE COURT: I mean, we've had wide-open
14 discussions about why the witnesses are cooperating.

15 MR. VILLA: But that's because it was
16 opened up on direct. And if we're going to follow
17 the American Rule, if I open it on direct, that's
18 one thing.

19 THE COURT: Once he takes that stand, his
20 credibility, bias, and prejudice are all at issue.
21 I can't slice it down and let you decide what to
22 bring in.

23 MS. DUNCAN: The other thing I'm
24 wondering, Your Honor, if the Government is not
25 contesting that Mr. Cordova made the statement to

1 Clark, a stipulation would avoid prejudice to Mr.
2 Baca and the other defendants.

3 THE COURT: I can't force anybody to
4 stipulate.

5 MR. VILLA: Would the Government stipulate
6 that Ben Clark will testify that Billy Cordova told
7 him to kill Sanchez?

8 MR. BECK: No, I won't. He's telling --
9 I've read the report.

10 MR. VILLA: He's your witness.

11 MR. BECK: I know he's on our Government's
12 witness list. We didn't call him.

13 THE COURT: Let's take it a step at a
14 time. I'll try to enforce the American Rule. I'll
15 try to do it as fairly as I possibly can. But once
16 he's sworn in, his credibility, bias, and prejudice
17 come into play. But I'll try to be fair to both
18 sides.

19 MR. VILLA: I guess I join in Mr. Baca's
20 request to sever, if that's the case.

21 THE COURT: The Government is going to
22 decide what it wants to defend on appeal, but I've
23 got to be fair to both sides.

24 All right. Let's call Mr. Clark.

25 (The following proceedings were held in

1 open court.)

2 MR. VILLA: I believe the marshals are
3 bringing him up, Your Honor.

4 MR. MAYNARD: Your Honor, may I approach?

5 (The following proceedings were held at
6 the bench.)

7 MR. MAYNARD: Just to note, Judge -- and I
8 should have mentioned this earlier, but Mr. Herrera
9 would join in that motion to sever.

10 THE COURT: Okay. We're not severing
11 anything right now.

12 MR. MAYNARD: That's all.

13 (The following proceedings were held in
14 open court.)

15 THE COURT: All right. Mr. Clark, if
16 you'll come in and stand next to the witness box
17 right here in front of you. Before you're seated,
18 my courtroom deputy, Ms. Standridge, will swear you
19 in. So if you'll raise your right hand to the best
20 of your ability. Just stand right there and raise
21 your right hand.

22 BENJAMIN CLARK,
23 after having been first duly sworn under oath,
24 was questioned and testified as follows:

25 THE CLERK: Please be seated. State and

1 spell your name for the record.

2 THE WITNESS: Benjamin Clark.

3 B-E-N-J-A-M-I-N C-L-A-R-K.

4 THE COURT: All right. Mr. Clark, Mr.
5 Villa.

6 DIRECT EXAMINATION

7 BY MR. VILLA:

8 Q. Good afternoon, Mr. Clark. You have
9 entered into a plea agreement, agreeing to cooperate
10 with the United States; is that right?

11 A. Yes, sir.

12 Q. And you did that back in November of 2016?

13 A. I'm not sure.

14 Q. If you saw your plea agreement, would that
15 refresh your memory?

16 A. Yeah, it would.

17 MR. VILLA: May I approach?

18 THE COURT: You may.

19 BY MR. VILLA:

20 Q. Mr. Clark, I'm showing you a copy of your
21 plea agreement, correct?

22 A. Yes, sir.

23 Q. And do you see the date on the top?

24 A. Yes, sir.

25 Q. Does that refresh your memory?

1 A. Yes.

2 Q. And so the plea agreement was entered
3 November of 2016?

4 A. Yes, sir.

5 Q. Now, prior to that time, did you know an
6 individual by the name of Billy Cordova?

7 A. Yes.

8 Q. And did Billy Cordova tell you that he
9 murdered Sammy Chavez?

10 A. He never told me he murdered Sammy Chavez.
11 But he made it seem like he murdered Sammy Chavez.

12 Q. Like he was taking credit for it?

13 A. Like he was taking credit for it, yes.

14 Q. So if he murdered Sammy Chavez, would he
15 be taking credit for something he didn't do?

16 A. I don't know. I can't tell you that.

17 MR. VILLA: May I have just a moment? No
18 future questions.

19 THE COURT: Thank you, Mr. Villa.

20 Do any of the defendants have direct
21 examination of Mr. Clark?

22 MS. DUNCAN: No, Your Honor.

23 THE COURT: All right. Mr. Beck, do you
24 have cross-examination of Mr. Clark?

25 MR. BECK: Yes, Your Honor.

1 MR. VILLA: Your Honor, I think that
2 Mr. Clark's attorney is gesturing to me. He'd like
3 to sit next to his client.

4 THE COURT: Mr. Hosford, if you want to
5 come up and sit, I think there's a chair. I can't
6 see it, but I think there's a chair there that some
7 of the counsel have been seated at, and if you want
8 to be seated there, you're welcome to.

9 MR. HOSFORD: Thank you.

10 THE COURT: Mr. Hosford.

11 CROSS-EXAMINATION

12 BY MR. BECK:

13 Q. Mr. Clark, you're an SNM member, right?

14 A. Yes, sir.

15 Q. You were brought into the gang in 1998?

16 MR. VILLA: Objection, outside the scope.

17 THE COURT: Overruled.

18 A. Yes, sir.

19 BY MR. BECK:

20 Q. And have you ever heard the term "bones"
21 or "huesos"?

22 MR. VILLA: Objection, outside the scope.

23 THE COURT: Overruled.

24 A. Yes, sir.

25

1 BY MR. BECK:

2 Q. Does that mean how an SNM Gang member
3 earned his membership in the SNM Gang?

4 A. Yes, sir.

5 Q. And you earned your SNM Gang membership,
6 or your bones, by stabbing an SNM member that goes
7 by the name of Junior, right?

8 A. Yes, sir.

9 Q. And who ordered you to stab Junior?

10 MR. VILLA: Objection, Your Honor. I
11 think this calls for hearsay and is outside the
12 scope.

13 MS. DUNCAN: Join, Your Honor.

14 THE COURT: I'm not sure it calls for
15 hearsay, but I am going to sustain the objection
16 because it's outside the scope.

17 BY MR. BECK:

18 Q. Was that an SNM hit?

19 A. Yes, sir.

20 Q. I think you talked about this with Mr.
21 Villa. But you, at one time, were a defendant in
22 this case; isn't that right?

23 A. Yes, sir.

24 Q. And you pleaded guilty, didn't you?

25 A. Yes, sir.

1 MR. BECK: Your Honor, the United States
2 moves to admit what's been marked for identification
3 purposes as Government's Exhibit 785, which is
4 Mr. Clark's plea agreement.

5 THE COURT: Any objection?

6 MR. VILLA: I just need to see the
7 document. I'm just going to hand it to my
8 co-counsel. No objection from Mr. Perez.

9 THE COURT: Any other defendant? Not
10 hearing or seeing any objection, Government's
11 Exhibit 785 will be admitted into evidence.

12 (Government Exhibit 785 admitted.)

13 BY MR. BECK:

14 Q. And, Mr. Clark, in front of you, I'm about
15 to show you what's been now admitted as Government's
16 Exhibit 785. Is that your plea agreement with the
17 Government?

18 A. Yes, it looks like it, sir.

19 Q. And that was the plea agreement that Mr.
20 Villa referenced with you, that you entered into on
21 November 15, 2016, right?

22 A. Yes, sir.

23 Q. If we turn to page 2 of that document,
24 under paragraph 3 you were charged with and agreed
25 to plead guilty to a charge of violent crimes in aid

1 of racketeering, murder, and aiding and abetting,
2 right?

3 A. Yes, sir.

4 Q. Paragraph 4 tells you that the sentence of
5 imprisonment that the Court may impose is a term of
6 imprisonment for life for that, right?

7 A. Yes, sir.

8 Q. And as you sit here today, you face a term
9 of a life sentence, right?

10 A. Yes, sir.

11 Q. And the crime that you pled guilty to was
12 an SNM murder, right?

13 A. Yes, sir.

14 Q. And it was an SNM murder that happened in
15 the Southern New Mexico Correctional Facility,
16 right?

17 MR. VILLA: Objection, outside the scope.

18 THE COURT: Well, I'll let him explore
19 this plea agreement, and probably that would be
20 about it. Go ahead.

21 A. Yes, sir.

22 BY MR. BECK:

23 Q. And that was a murder in June 2007, right?

24 A. Yes.

25 Q. And that was a murder of another SNM

1 member, Freddie Sanchez; is that right?

2 A. Yes, sir.

3 Q. And Freddie Sanchez was killed by
4 strangulation?

5 MR. VILLA: Objection, outside the scope.

6 THE COURT: Is this in the plea agreement?

7 MR. BECK: Yes.

8 MR. VILLA: Well, Your Honor, can we
9 approach?

10 THE COURT: Well, I'm going to allow a
11 little bit, but I think we're going to have to take
12 this a question at a time.

13 MR. VILLA: I don't think it is in the
14 plea agreement that's being offered into evidence.

15 THE COURT: You can approach if you want,
16 but I think we're going to take these questions one
17 at a time.

18 MR. VILLA: I understand, but I'd still
19 like to make a record.

20 THE COURT: If you want to come up and
21 make a record.

22 (The following proceedings were held at
23 the bench.)

24 MR. VILLA: Judge, the plea agreement that
25 the United States offered redacts the factual basis,

1 and Mr. Beck is asking him about stuff that's in the
2 plea agreement that's been redacted. This is based
3 on the Court's prior ruling. And I understand him
4 exploring what he pled guilty to and what the
5 maximum penalties are, but getting into the factual
6 basis that's been redacted I think is out of the
7 bounds.

8 MR. BECK: Your Honor, I'm trying to
9 elicit facts that he pled guilty to.

10 THE COURT: Be very brief about it.

11 MR. BECK: I will.

12 THE COURT: I mean, I'm about done with
13 it. Bring it to an end.

14 (The following proceedings were held in
15 open court.)

16 THE COURT: Mr. Beck.

17 BY MR. BECK:

18 Q. Mr. Clark, when you pled guilty to violent
19 crimes in aid of racketeering, murder, and aiding
20 and abetting, you pled guilty because you passed
21 paperwork on Freddie Sanchez; isn't that right?

22 MR. VILLA: Same objection.

23 THE COURT: Sustained on that question.

24 BY MR. BECK:

25 Q. Don't answer that question, Mr. Clark.

1 Mr. Clark, were you a leader of the SNM
2 Gang, or a shot caller, at one period in time?

3 MS. DUNCAN: Your Honor, objection, beyond
4 the scope.

5 THE COURT: Sustained.

6 BY MR. BECK:

7 Q. And Mr. Clark, attached to your plea
8 agreement was there an addendum to your plea
9 agreement? Have you ever heard of a -- you've heard
10 of a 5K addendum?

11 A. Yes, sir.

12 Q. Okay.

13 MR. BECK: And the United States moves at
14 this time to admit what's been marked for
15 identification purpose as Government's Exhibit 786,
16 which is the addendum to Mr. Clark's plea agreement.

17 THE COURT: Any objection?

18 MR. VILLA: If I could just see the
19 document. No objection from Mr. Perez.

20 THE COURT: Anybody else?

21 MS. DUNCAN: No objection, Your Honor.

22 THE COURT: All right. Not seeing or
23 hearing any objection, Government's Exhibit 786 will
24 be admitted into evidence.

25

1 (Government Exhibit 786 admitted.)

2 BY MR. BECK:

3 Q. And before I show you that, I'm going to
4 go back to Government's Exhibit 785, the actual plea
5 agreement. And this document was filed on November
6 15th of 2016, right?

7 A. Yes, sir.

8 Q. Do you see where it says "Sealed" above
9 "Plea Agreement"?

10 A. Yes, sir.

11 Q. And do you know that means that only the
12 parties to the case, and no one in the public, can
13 see this plea agreement?

14 A. Yes, sir.

15 Q. Do you know that your attorneys asked for
16 this to be sealed?

17 MS. DUNCAN: Your Honor, I'm going to
18 object on the grounds of relevance and hearsay.

19 THE COURT: Well, overruled.

20 BY MR. BECK:

21 A. Yes, sir.

22 Q. Now I'm going to go to Government's
23 Exhibit 786. And you've seen this document before,
24 Mr. Clark?

25 A. Yes, sir.

1 Q. And on page 2 of that document, that
2 document also is dated November 15, 2016, right?

3 A. Yes, sir.

4 Q. And that second signature above where it
5 says "Benjamin Clark a/k/a Cyclone," that's your
6 signature, right?

7 A. Yes, sir.

8 Q. And is Cyclone the name that you went by
9 in the SNM Gang?

10 A. Yes, sir.

11 Q. All right. And does this document
12 indicate that you agreed to cooperate with the
13 Government and, if asked, to testify in this case?

14 A. Yes, sir.

15 Q. And does it also state that you understand
16 that you have to testify truthfully, to comply with
17 this agreement?

18 A. Yes, sir.

19 Q. And that you can't exaggerate the
20 involvement of any person in a crime?

21 A. Yes, sir.

22 Q. And you can't falsely minimize the
23 involvement of any person in a crime, right?

24 A. Yes, sir.

25 Q. And does this document also say that if

1 you comply with your obligation to cooperate, the
2 United States Attorney may file what we've called a
3 5K motion?

4 A. Yes, sir.

5 Q. And then does it say that the acceptance
6 of that, and your eventual sentence, is determined
7 solely within the discretion of the Court?

8 A. Yes, sir.

9 Q. And is that Court Judge Browning?

10 A. I believe so.

11 Q. And earlier, when Mr. Villa asked you, Mr.
12 Cordova never told you that he killed Sammy Chavez,
13 right?

14 A. No, he never flat-out said, "I killed
15 Sammy Chavez."

16 Q. Okay. And do you know he was in prison at
17 the time that that murder took place?

18 A. I don't know. I couldn't say.

19 MR. BECK: Nothing further, Your Honor.

20 THE COURT: Thank you, Mr. Beck.

21 Any redirect, Mr. Villa?

22 MR. VILLA: Yes, Your Honor.

23 THE COURT: Mr. Villa.

24

25

1 REDIRECT EXAMINATION

2 BY MR. VILLA:

3 Q. Mr. Clark, so if I understand your
4 testimony, Mr. Cordova never flat-out said that he
5 killed Sammy Chavez, but he was trying to make you
6 believe that he did that?

7 A. Yes, sir.

8 Q. And pursuant to your agreement that the
9 Government showed you, this testimony you're giving
10 today is truthful, right?

11 A. Yes, sir.

12 Q. And you're not exaggerating?

13 A. No, sir.

14 Q. And when you're testifying that Billy
15 Cordova made you believe he killed Sammy Chavez,
16 you're not trying to minimize his role or inflate
17 his role, are you?

18 MR. BECK: Objection, Your Honor. That
19 misstates the testimony.

20 THE COURT: Well, I'll let you recross if
21 you want.

22 BY MR. VILLA:

23 Q. Mr. Cordova's role, you're not trying to
24 minimize it or increase the role in your testimony
25 here today?

1 MR. BECK: Objection, Your Honor, compound
2 question.

3 THE COURT: Overruled.

4 BY MR. VILLA:

5 Q. You can answer.

6 A. No.

7 Q. So Mr. Beck asked you if Mr. Cordova was
8 in custody at the time Sammy Chavez was killed. If
9 that were true -- and I know you don't know if it's
10 true -- but if that were true, when Mr. Cordova
11 tried to make you believe that he killed Sammy
12 Chavez, Mr. Cordova was not being honest with you,
13 was he?

14 A. If that was true.

15 MR. VILLA: That's all the questions I
16 have.

17 THE COURT: Thank you, Mr. Villa.

18 Any other defendants have redirect?

19 MS. DUNCAN: No, Your Honor.

20 THE COURT: All right. Mr. Beck, do you
21 have anything further?

22 MR. BECK: No, Your Honor.

23 THE COURT: All right. Mr. Clark, you may
24 step down.

25 Is there any reason Mr. Clark cannot be

1 excused from the proceedings?

2 MS. DUNCAN: No, Your Honor.

3 THE COURT: How about you, Mr. Beck? Can
4 he be excused?

5 MR. BECK: No, Your Honor, he can be
6 excused.

7 THE COURT: All right. Not hearing any
8 objection, Mr. Clark, you're excused from the
9 proceedings. Thank you for your testimony.

10 THE WITNESS: Thank you.

11 THE COURT: All right. Do the defendants
12 have their next witness or evidence?

13 MS. BHALLA: Yes, Your Honor. Defense
14 calls Bobby Delgado.

15 THE COURT: All right. Mr. Delgado, if
16 you'll come up and stand right next to the witness
17 box on my right, your left. Before you're seated,
18 my courtroom deputy Ms. Standridge will swear you
19 in.

20 BOBBY DELGADO,
21 after having been first duly sworn under oath,
22 was questioned, and testified as follows:

23 THE CLERK: Please be seated. State and
24 spell your name for the record.

25 THE WITNESS: Bobby Delgado, B-O-B-B-Y,

1 D-E-L-G-A-D-O.

2 THE COURT: Mr. Delgado.

3 Ms. Bhalla.

4 MS. BHALLA: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. BHALLA:

7 Q. Good afternoon, Mr. Delgado.

8 A. Good afternoon.

9 Q. How are you doing?

10 A. Good.

11 Q. Okay. Can you bring the microphone just a
12 little bit closer? It's hard to hear you.

13 A. Right there?

14 THE COURT: You may need to move your seat
15 up a little bit.

16 A. There?

17 BY MS. BHALLA:

18 Q. Mr. Delgado, do you know why you're here
19 today?

20 A. Yeah.

21 Q. Okay. And why are you here? Is it to
22 testify about --

23 A. About what happened on the day when the
24 murder happened, and then after.

25 Q. Okay. And would that be the murder of

1 Javier Molina?

2 A. Yes.

3 Q. Okay. Let's ask you a couple of
4 background questions, okay?

5 A. Okay.

6 Q. Are you in custody or out of custody?

7 A. Out of custody.

8 Q. Okay. And you have to lean forward just a
9 little bit. Thanks.

10 How long have you been out of custody?

11 A. Going on five years.

12 Q. Okay. And are you living in New Mexico?

13 A. Yes.

14 Q. Okay. And where are you living?

15 A. In Espanola, New Mexico.

16 Q. Is that where you're from?

17 A. Yes.

18 Q. Okay. I want to ask you a little bit
19 about how you wound up in prison, okay?

20 A. Okay.

21 Q. Do you have some prior felony convictions?

22 A. Yes, I do.

23 Q. And would one of those have been for
24 burglary?

25 A. Yes.

1 Q. Okay. And did that happen around -- let's
2 see, 1998?

3 A. Yes.

4 Q. And then did you pick up another charge
5 for forgery?

6 A. Yes.

7 Q. And would that have been in 2000?

8 A. Yes.

9 Q. And did you pick up a shoplifting charge?

10 A. Yes.

11 Q. Okay. And that was also in the year 2000?

12 A. Yes.

13 Q. Okay. Did you ever pick up a charge for
14 burglary and aggravated assault?

15 A. Yes, I did.

16 Q. Do you remember when you picked that
17 charge up?

18 A. No, I don't.

19 Q. Does 2011 sound right to you?

20 A. Yeah.

21 Q. Okay. And when you were picking up these
22 charges, what was going on in your life?

23 A. I was hooked on heroin.

24 Q. Okay. And how long were you a heroin
25 addict?

1 A. Off and on for 15 years.

2 Q. Okay. And is that what eventually led you
3 to being in prison?

4 A. Yes.

5 Q. Okay. Did you do anything about your
6 heroin addiction after you got to prison?

7 A. Yeah. This time, the day that I got
8 sentenced, I gave up the drugs.

9 Q. And how did you do that?

10 A. Just quit; said, this is it. It's taken
11 me to prison the second time. I'm not going to do
12 this anymore.

13 Q. And did you utilize any programs in the
14 prison to get off drugs?

15 A. I took the 16-week drug course in there,
16 and I got a certificate for that.

17 Q. And are you sober now?

18 A. Yes.

19 Q. Okay. And how long have you been sober?

20 A. May 9th will be six years.

21 Q. Okay. And I want to ask you a little bit
22 about -- are you -- are you on any medications?

23 A. Yes.

24 Q. Okay. And what conditions cause you to
25 have to be on medications?

1 A. The PTSD has a lot to do with it; anxiety
2 disorder, the not sleeping.

3 Q. I missed the last part, I'm sorry.

4 A. The not sleeping.

5 Q. Okay. So not sleeping. Okay. And do you
6 know what caused your PTSD?

7 A. Probably being in the hole so long.

8 Q. And can you explain to the jury what the
9 hole is?

10 A. Slam down, 23/7 in your cell.

11 Q. So would that be like solitary
12 confinement?

13 A. Pretty much.

14 Q. Okay. And are you currently on any
15 medications for the disorders that you've listed?

16 A. Yes.

17 Q. Can you tell us what medications you're
18 on?

19 A. Olanzapine, Keppra, Prazosin, Hydroxyzine,
20 and Suboxone.

21 Q. Do you take that medication as prescribed?

22 A. Yes, I do.

23 Q. Okay. And do you see a doctor about your
24 medications on a regular basis?

25 A. Yes, I do.

1 Q. So I want to turn your attention to --
2 back to -- let me just get the year. I'm sorry, Mr.
3 Delgado.

4 When you went into prison, and I think --
5 am I correct that what sent to you prison was that
6 burglary and aggravated assault from 2011?

7 A. For that time, yeah.

8 Q. Yeah. And once you got sentenced in that
9 case, did you ever get housed next to Carlos
10 Herrera?

11 A. When I got sentenced?

12 Q. Yes.

13 A. When I got to the cell, Carlos was in the
14 pod that I went into.

15 Q. Okay. Was that at PNM North, PNM South?

16 A. PNM South.

17 Q. And how long were you all housed at PNM
18 South; do you remember?

19 A. I think it was like three months.

20 Q. Okay.

21 A. Maybe four months.

22 Q. And did you get transferred somewhere
23 after that?

24 A. Yes.

25 Q. Where did you go after that?

1 A. Las Cruces.

2 Q. Okay.

3 A. Southern.

4 Q. Okay. And when was that? Do you know, or
5 do you have an idea?

6 A. No.

7 Q. Do you know what year?

8 A. Maybe 2013.

9 Q. Okay. And once you got moved to Southern,
10 what pod were you in?

11 A. I was in yellow pod.

12 Q. Yellow pod. And was Carlos with you in
13 the yellow pod?

14 A. Yes, he was.

15 Q. And where was he, in relation to your
16 cell?

17 A. If I looked out my -- if I looked out my
18 cell window, he was to the right of me, right next
19 door.

20 Q. Okay. Do you remember where you were the
21 day that Javier Molina was killed?

22 A. Where was I?

23 Q. Do you remember?

24 A. Yeah, I was in my unit.

25 Q. You were in -- and your unit would be

1 where, the yellow pod?

2 A. Yeah, yellow pod.

3 Q. Okay. I wanted to talk to you about the
4 day before the Molina murder, okay? And then we'll
5 go to the murder.

6 A. Okay.

7 Q. The day before the Molina murder, do you
8 remember any other inmates getting brought into the
9 yellow pod the day before the murder?

10 A. Yeah.

11 Q. And do you remember who got brought in?

12 A. Marijuano and Archie.

13 Q. And do you know what Marijuano's name is?

14 A. No.

15 Q. Does Lupe Urquizo sound --

16 A. Oh, yeah, Lupe.

17 Q. And do you know, is Archie's last name
18 Varela?

19 A. I think so.

20 Q. Okay. You think so. Okay. And if you
21 don't know the answer to something, that's okay.
22 Just say, "I don't know," okay?

23 A. Okay.

24 Q. Okay. Do you remember, or do you have any
25 idea what time they got there?

1 A. It was getting towards the evening,
2 because everybody was getting -- getting slammed
3 down, because we were going to start cleaning. And
4 that's when -- so it was in the evening time.

5 Q. Okay. And do you remember where they were
6 put when they got brought in?

7 A. They got put in the yellow pod on the
8 bottom tier.

9 Q. Okay. And were you on the top tier?

10 A. I was on the top tier.

11 Q. Was Carlos, also?

12 A. On the top tier.

13 Q. Okay. And do you know whether or not they
14 were let out, or whether or not they were left in
15 their cells once they got there?

16 A. They were locked down.

17 Q. Is that what normally happens when someone
18 gets transferred into --

19 A. Yeah, you have to go through an
20 orientation.

21 Q. Okay. And did he get let out of his cell
22 anytime that day?

23 A. Marijuano?

24 Q. Marijuano.

25 A. No.

1 Q. Did anybody else get let out of their
2 cells that evening, that you remember?

3 A. After they got there, they got locked
4 down. And they had me and Alex Munoz to clean the
5 pod, because we were pod porters, so they had us
6 around.

7 Q. So you went out and cleaned the pods?

8 A. Yeah.

9 Q. Did you --

10 A. Pod.

11 Q. Just the pod?

12 A. Just our yellow pod.

13 Q. Okay, I'm sorry. Just -- so a pod porter
14 just cleans the one pod that they're in?

15 A. Yeah.

16 Q. Okay, sorry. And when you got let out to
17 clean the pod, was anyone else out, besides you and
18 Alex Munoz?

19 A. No.

20 Q. Okay. When did everybody get let out the
21 next morning, or who gets let out when, in the
22 morning?

23 A. I don't know if it was the top tier or the
24 bottom tier that got out. Because that's how they
25 were letting us out, one tier at a time. But I

1 don't remember which got let out first.

2 Q. Okay. So when you would get out for tier
3 time, you would only get let out with the top tier?

4 A. Yeah.

5 Q. Okay. And that's because you were on the
6 top tier?

7 A. Yeah.

8 Q. So the day -- I think, if I'm
9 understanding your testimony correctly, okay --

10 A. Right.

11 Q. -- the day that Lupe Urquizo got there,
12 was that the day before the murder? The day that
13 Marijuano came into the yellow pod, was that --

14 A. Was that the day of the murder?

15 Q. The day before the murder.

16 A. Yeah.

17 Q. Okay. And once he got brought in, he
18 didn't get let out that day or that evening?

19 A. No.

20 Q. Okay. So now, let's go to the next day,
21 to the day of the Molina murder, okay? When you got
22 let out on tier time, I think you said that you got
23 let out with the top tier; right?

24 A. Right.

25 Q. Okay. And Carlos was on the top tier?

1 A. Right.

2 Q. Do you know how long your tier time was?

3 A. I think it was every hour and a half or
4 every two hours.

5 Q. So, like, would it rotate?

6 A. Yeah, it would rotate, different -- with
7 the top and bottom tier would rotate different
8 times. I think it was like every couple of hours,
9 though, if I'm not mistaken.

10 Q. Okay. And when you and Carlos got let out
11 on tier time, is there something that you all
12 normally did, or something -- a place that you all
13 normally sat, or what did you do on tier time,
14 typically?

15 A. We would come out and drink our coffee in
16 front of our cells.

17 Q. Would you stay on the top tier, or would
18 you go to the bottom tier?

19 A. On the top tier.

20 Q. Okay. And the day of the murder, do you
21 remember whether or not you and Carlos went down to
22 the bottom tier, or whether or not you stayed on the
23 top tier?

24 A. I don't remember.

25 Q. Okay. Did you ever see Carlos talk to

1 Lupe Urquizo outside of his cell door?

2 A. No.

3 Q. Okay. Is that something that you think
4 you would have noticed?

5 A. Kind of. If we're not -- yeah, because
6 we're supposed to stay away from the doors. The
7 guys on orientation, we're supposed to stay away
8 from the doors.

9 Q. Okay. And what would happen, if you
10 recall, what would happen when an inmate would talk
11 to another inmate?

12 A. They would tell you they'll put you in
13 your cell if you don't stay away from their door.

14 Q. Okay. And so the day of the murder, did
15 you ever see Carlos outside the door of Lupe
16 Urquizo's cell?

17 A. No.

18 Q. Okay. And did you normally hang out with
19 Carlos on tier time?

20 A. Yes.

21 Q. And why did you all normally hang out?

22 A. Because he was my friend.

23 Q. Okay. Did you typically spend your tier
24 time with him because you all were friends?

25 A. Yes.

1 Q. Okay. So on a typical day, you all would
2 have been hanging out together on tier time; is that
3 fair?

4 A. Yeah, fair to say.

5 Q. Okay. And the day of the murder, did you
6 ever see Carlos pass paperwork under the door that
7 connects the yellow pod to the blue pod?

8 A. No, never.

9 Q. Okay. Do you think that's something that
10 you would have noticed?

11 A. Yeah, that would be kind of obvious.

12 Q. Okay. Where were you when the murder
13 happened, or how did you get alerted to the murder?

14 A. We were waiting for the nurse to come in
15 to dispense meds. So we were on the bottom tier,
16 just waiting for them to come in. And that's when
17 everything went crazy.

18 Q. And when you say "everything went crazy,"
19 can you tell us what you mean?

20 A. Everybody stand down, everybody stand
21 down, to your cells, to your cells. So we knew
22 something was up.

23 Q. Okay. How did you find out -- and I'm not
24 going to ask you what necessarily other people told
25 you, because that's hearsay -- but did -- how did

1 you find out? Like, did somebody tell you? Or how
2 did you find out that Javier Molina was murdered?

3 A. The next day, the guard said.

4 Q. Okay. And once you got locked down, were
5 you locked down next to Carlos where you were
6 normally?

7 A. Yes.

8 Q. And did you all talk about what happened?

9 A. No, we really didn't talk about that. We
10 just said where was I, and that was it.

11 Q. Did Carlos ever express to you that he had
12 anything to do with the murder?

13 MR. BECK: Objection.

14 THE COURT: Sustained.

15 MS. BHALLA: Okay. Let me see if I can
16 rephrase it, Your Honor.

17 BY MS. BHALLA:

18 Q. After the murder happened, were you
19 surprised?

20 A. Was I surprised?

21 Q. Yes, were you surprised?

22 A. Yeah, I freaked out.

23 Q. And did Carlos also have a surprised
24 reaction?

25 MR. BECK: Objection, Your Honor, hearsay.

1 MS. BHALLA: I think it goes to present
2 sense impression.

3 THE COURT: If it's an assertion, then it
4 would be for the truth of the matter. So sustained.

5 MS. BHALLA: Let me put it another way,
6 Your Honor, if that's all right; trying to abide by
7 the ruling of the Court.

8 BY MS. BHALLA:

9 Q. Did Carlos ever admit to you --

10 MR. BECK: Objection, Your Honor, hearsay.

11 THE COURT: I think that would be hearsay,
12 as well.

13 MS. BHALLA: Okay. I'll move on, Your
14 Honor.

15 BY MS. BHALLA:

16 Q. Were you aware of the murder before the
17 murder occurred?

18 A. No.

19 Q. Do you think that that's something that
20 you would have been aware of?

21 A. No.

22 Q. Let me ask it another way: Do you think
23 that there would have been tension in the pod if
24 people knew ahead of time that the murder was going
25 to occur?

1 MR. BECK: Objection, Your Honor.

2 A. Yeah.

3 MR. BECK: Foundation.

4 THE COURT: I'm sorry?

5 MR. BECK: Foundation.

6 THE COURT: Well, he was there. I think
7 he can answer that question. Overruled.

8 BY MS. BHALLA:

9 Q. Do you need me to repeat the question?

10 A. Yes.

11 Q. Okay. I have to remember exactly what I
12 said, sorry. The day of -- if people in the pod had
13 been aware that a murder was about to occur, do you
14 think that there would have been tension in the pod?

15 A. Yeah.

16 Q. Okay. And was there tension in the pod?

17 A. No.

18 Q. Okay. So it was a complete surprise to
19 you?

20 A. Yeah, everybody. Everybody was all
21 surprised.

22 Q. Okay. And so you don't think that anybody
23 in the pod knew about it ahead of time?

24 A. No.

25 MR. BECK: Objection, Your Honor,

1 foundation.

2 THE COURT: Well, I'm going to strike
3 that. I think you need to lay some foundation as to
4 how he'd know what everybody in the pod would know.

5 MS. BHALLA: All right.

6 BY MS. BHALLA:

7 Q. When you were -- have you ever been in a
8 situation where -- in a different pod at a different
9 time, when an inmate was assaulted?

10 A. No.

11 Q. Okay. So have you ever been around when
12 another inmate was beat up?

13 A. No.

14 Q. Okay. I wanted to ask you a little bit
15 about -- were you ever a member of the SNM?

16 A. No.

17 Q. Okay. Were you ever suspected as being a
18 member of the SNM?

19 A. Yes.

20 Q. Okay. And did you ever get interviewed by
21 anybody about whether or not you had affiliation
22 with the SNM?

23 A. Yeah, in Roswell.

24 Q. Okay. And would that have been, maybe, in
25 2002?

1 A. No, in 2002, I was at the South. That's
2 when they took us from Roswell to Cruces, and then
3 we ended up at the South.

4 Q. Okay. During the time that you were
5 transferred back to South, did anybody from STIU
6 ever ask you whether or not you were a member of the
7 SNM?

8 A. Yes.

9 Q. Okay. And do you recall what you told
10 them?

11 A. Yes.

12 Q. What did you tell them?

13 A. That I'm not a gang member.

14 Q. Okay. Did you have friends that were gang
15 members?

16 A. Yeah, I knew a couple of them.

17 Q. And how did you know the people that you
18 knew?

19 A. I grew up with one of them on the streets,
20 since we were young. And the other guy they say I
21 know, I never even saw him, ever.

22 Q. Okay. And when did you -- let me just ask
23 you, did you tell them that -- because you were
24 suspected of being a member of the SNM what -- how
25 did you -- is that why you got housed in the SNM

1 pod?

2 MR. BECK: Objection, Your Honor,
3 foundation.

4 THE COURT: Well, he's got to lay a
5 foundation, if he knows how he got housed there.

6 BY MS. BHALLA:

7 Q. Okay. Do you know why you got housed in
8 the yellow pod?

9 A. Because I was a suspected gang member.

10 Q. Okay. And even though you were suspected,
11 did you ever tell anybody that you were, in fact, an
12 SNM member?

13 A. No.

14 Q. Okay. And did you tell the people at STIU
15 who you were -- that you were friends with people in
16 the SNM?

17 A. Yes, I did.

18 Q. Okay.

19 A. I got questioned about it, so --

20 Q. Okay. And so what you explained to them
21 was who you were friends with?

22 A. Yes, who my friend was. It was only Ivan
23 Atencio was the only one that I grew up with.

24 MS. BHALLA: Okay. May I have a moment,
25 Your Honor?

1 THE COURT: You may.

2 BY MS. BHALLA:

3 Q. Okay. Just a few more questions, Mr.
4 Delgado. Do you have any tattoos?

5 A. Yes, I do.

6 Q. Okay. Can you tell us what those tattoos
7 are? Do you mind? You don't have to show us. You
8 can just tell us.

9 A. They're just an hourglass, a sacred heart,
10 a girl here, another girl here. I have the sacred
11 heart -- the whole sacred heart of the woman, all
12 that, and I have Jesus holding a lamb.

13 Q. Okay. Do you have any SNM tattoos?

14 A. No.

15 Q. Okay. Did you have any problems with any
16 of the members in the SNM?

17 A. No.

18 Q. Okay. So you basically got along with
19 people?

20 A. Yeah.

21 Q. Okay. And do you think that you would
22 have known about a murder that was about to happen
23 in the next pod if it was something that was being
24 planned in the pod where you were housed?

25 MR. BECK: Objection, foundation and

1 hearsay.

2 THE COURT: I think you're going to have
3 to lay some foundation now that you've got him in
4 another pod.

5 MS. BHALLA: No, just in the yellow pod,
6 Your Honor. The question was about the yellow pod.

7 THE COURT: I think he's already answered
8 this question. I think this is the same one.

9 MS. BHALLA: Okay. That's fair, Your
10 Honor. I'll go ahead and pass the witness at this
11 time, Your Honor.

12 Thank you, Mr. Delgado.

13 THE COURT: Thank you, Ms. Bhalla.

14 Any other defendants have direct
15 examination of Mr. Delgado?

16 All right. Mr. Beck, do you have
17 cross-examination of Mr. Delgado?

18 CROSS-EXAMINATION

19 BY MR. BECK:

20 Q. Mr. Delgado, in March of 2014, you were
21 housed at Southern New Mexico Correctional Facility;
22 right?

23 A. Yes, sir.

24 Q. In the yellow pod?

25 A. Yes, sir.

1 Q. Okay. And the blue pod is right next
2 door; right?

3 A. Yes, sir.

4 Q. And they were on sort of the same time
5 schedule as the yellow pod, in terms of when you're
6 eating, and when the porters are out; isn't that
7 right?

8 A. Yeah. They have tier time. So half the
9 tier would come out at one time, the bottom would be
10 locked down. And I mean, it depended; the bottom
11 went out or the top went out. It just depended on
12 the day.

13 Q. Okay. So -- and blue pod -- and I'm just
14 making sure I understand. Blue pod, like in yellow
15 pod, only the top tier was let out for tier time,
16 and then at some point switched to the bottom tier;
17 right?

18 MS. BHALLA: Objection, foundation.

19 A. Yes.

20 THE COURT: Overruled.

21 BY MR. BECK:

22 Q. You can answer that.

23 A. Well, it would change. It varied.

24 Q. Okay. That's what I thought you said. On
25 March 7 of 2014, in blue pod, who is let out on the

1 top tier and who is let out on the bottom tier
2 varied; right?

3 A. Yes, it varied. So you didn't know who
4 was let out, you know what I mean?

5 Q. Yes, yes. And that was the same in your
6 pod, as far as your memory goes in March of 2014?

7 A. Yeah.

8 Q. And I think you said that your only friend
9 from SNM was Ivan Atencio; right?

10 A. Yes, he is my friend.

11 Q. But you said Carlos Herrera was your
12 friend, right?

13 A. Yes.

14 Q. Have you seen Carlos Herrera's tattoos?

15 A. Some of them.

16 Q. Have you seen the big SNM tattoo on his
17 stomach in the front?

18 A. Yes, I have.

19 Q. So you know he's SNM?

20 A. Yes, I do.

21 Q. So he's your friend?

22 A. Yes.

23 Q. And I think you said Alex Munoz. You were
24 housed with him, right, in the yellow pod?

25 A. Oh, yeah, now -- Alex Munoz was in the

1 yellow pod.

2 Q. And he's your friend?

3 A. Yeah.

4 Q. He's SNM?

5 A. He wouldn't claim SNM.

6 Q. Okay. But he is SNM, right?

7 A. He'd say he wasn't.

8 Q. Okay. So if STIU said that he is SNM, you
9 disagree with that?

10 A. Well, yeah.

11 Q. Okay. And what is STIU?

12 A. The gang unit.

13 Q. Is that the Security Threat Intelligence
14 Unit?

15 A. Yes.

16 Q. And they interact with the prison gangs,
17 right?

18 A. Right.

19 Q. Like SNM?

20 A. Right.

21 Q. And you know that yellow pod in 2014, that
22 was an SNM pod; right?

23 A. Yes.

24 Q. And so you were an SNM associate in March
25 of 2014; right?

1 A. What do you mean by "associate"?

2 Q. Well, you were friends with SNM members in
3 2014; right?

4 A. Well, that's where they had me, so I had
5 no choice but to be friends.

6 Q. Well, that's not what I was asking. I was
7 just asking, you were friends with SNM members in
8 2014; right?

9 A. Yes.

10 Q. And you were friends with Paul Martin or
11 Paulo Martin at one time?

12 A. Yeah.

13 Q. And he was an SNM member?

14 A. Yeah.

15 Q. Okay. So earlier, when you said Ivan
16 Atencio was your only friend that was an SNM member,
17 are you now remembering that you were also friends
18 with Paul Martin?

19 MS. BHALLA: Objection, misstates the
20 testimony, Your Honor.

21 THE COURT: Overruled.

22 A. No -- yeah, I'm just remembering that I
23 knew Paulo.

24 BY MR. BECK:

25 Q. And again, it sounds like you're on a lot

1 of medication right now; is that fair to say?

2 A. No.

3 Q. I thought you listed four medications?

4 A. I take them at night. Everything I take
5 is at night.

6 Q. So just -- every night you're just taking
7 them?

8 A. Yeah, I take the medication --

9 Q. And so in 2001, when you were put in
10 prison, you told STIU you were friends with Paul
11 Martin; right?

12 A. Yeah.

13 Q. And you said that he was in the SNM Gang?

14 A. Yes.

15 Q. And you know that Carlos Herrera was the
16 leader of the SNM pod, in yellow pod, when you were
17 there in March 2014; right?

18 A. No.

19 Q. So you don't know he was the leader in
20 2014?

21 A. No.

22 Q. In 2014, alongside you and Mr. Herrera in
23 yellow pod, Dale Chavez was also there, Dreamer?

24 A. Yes.

25 Q. And Alex Munoz, right?

1 A. Yes.

2 Q. And again, Alex Munoz, that's -- he's
3 related to the founder of the SNM, Angel Munoz;
4 right?

5 A. What?

6 Q. Alex Munoz, your friend, right --

7 A. Yes.

8 Q. -- in the SNM pod?

9 A. Right.

10 Q. He's related to Angel Munoz, the founder
11 of the SNM; right?

12 A. Not that I know of.

13 Q. And when you came back to prison in 2011,
14 you were interviewed by STIU again, weren't you?

15 A. Yes.

16 Q. Because they -- I guess in your version,
17 they suspected you as an SNM Gang member?

18 A. Yes.

19 Q. And you told them that you were recruited
20 in 1999 by Angel Munoz and Ivan Atencio; right?

21 A. No.

22 Q. So you didn't tell them that?

23 A. No.

24 Q. But Ivan Atencio, you just said, was your
25 good friend, right?

1 A. Yeah, he is my good friend.

2 Q. Okay.

3 A. I never even met Angel Munoz, or ever even
4 seen him.

5 Q. Okay. I know that's your story. But you
6 told them that -- you told the STIU that you'd be
7 fine living in an SNM pod in 2012; right?

8 A. No, I just -- I've been saying I'm not an
9 SNMer since the first time I got to prison.

10 Q. That's not what I'm asking you. I'm
11 asking you, when STIU interviews you, they ask you
12 if you'd be all right being in a certain pod; isn't
13 that right?

14 A. No, they don't ask you. If you're a
15 suspected gang member, you're going to an SNM pod.

16 Q. Okay. So it's your story, here, that
17 before you're placed in an SNM pod -- STIU, I think
18 you said earlier, deals with the gangs; right?

19 A. Right.

20 Q. And you know from your time in prison that
21 gangs, like the SNM, murder inmates; right?

22 A. Now, what?

23 Q. You know from your time in prison that
24 gangs, like the SNM, murder other inmates; right?

25 A. No, I don't know that.

1 Q. Okay. So you don't know that in March
2 2014, the SNM murdered Javier Molina?

3 A. Yeah, now I -- now.

4 Q. Well, you knew that later on, right?

5 A. Yeah, well, after it happened, of course I
6 knew it.

7 Q. Because you said you were surprised,
8 right?

9 A. Yeah.

10 Q. Okay. So now, do you remember that gangs
11 like SNM murder other inmates?

12 A. Well, it happened.

13 Q. Okay. So is that a yes? You remember now
14 that SNM Gang kills other inmates; right?

15 A. Well, I don't understand.

16 Q. Sure. Gangs, like the SNM, murder other
17 inmates; is that right?

18 A. No, not that I -- no.

19 Q. Okay, fair enough. Gangs, like the SNM,
20 murder inmates when there is paperwork on them;
21 right?

22 A. People get murdered for all kinds of
23 things in prison.

24 Q. Okay. That's not the question I asked.
25 The question I asked is: Gangs, like the SNM,

1 murder people in prison when there is paperwork on
2 them; right?

3 A. I don't know. I'm not part of it, so I
4 wouldn't know if they -- whatever they do, if they
5 have paperwork on somebody, or whatever, I don't
6 know. I was never -- I was not allowed to be in
7 none of their -- I wasn't a gang member. I wasn't
8 SNM, so they would keep me out of it.

9 Q. The SNM members would keep you out of the
10 SNM business; is that what you're saying?

11 A. Yeah.

12 Q. Okay. And you didn't know about Javier
13 Molina's murder before it happened; right?

14 A. No.

15 Q. Okay. Now, I want to take you through --
16 MR. BECK: May I have a moment, Your
17 Honor?

18 THE COURT: You may.

19 BY MR. BECK:

20 Q. Just to make sure I'm clear on this, it's
21 your testimony here today that Carlos Herrera was
22 not a leader in the yellow pod; right?

23 A. Yes.

24 Q. But just a minute ago, you said the SNM
25 kept you out of their business; right?

1 A. That what?

2 Q. That the SNM kept you out of their
3 business?

4 A. They keep me out of their business, yes.

5 Q. Who were the porters in blue pod, March 7
6 of 2014?

7 A. I have no idea.

8 Q. And I just want to make sure I'm clear on
9 one more point. It's your testimony, here, you
10 don't remember Carlos Herrera going down to Lupe
11 Urquizo's door; right?

12 A. Right.

13 Q. And that would have been surprising to
14 you? I think you said you would have noticed
15 because there was that staggered tier time?

16 A. Yeah.

17 Q. And that was the same staggered tier time
18 at the time that went on in blue pod; right?

19 A. Yeah, the same thing in all the pods.

20 Q. And that's why you would remember clearly
21 him going down there, because with the staggered
22 tier time, you guys had coffee outside the --

23 A. Yeah, on the top tier.

24 MR. BECK: No further questions, Your
25 Honor.

1 THE COURT: Thank you, Mr. Beck.

2 Any other defendants have redirect? Ms.

3 Bhalla, do you have redirect?

4 MS. BHALLA: Thank you, Your Honor.

5 THE COURT: Ms. Bhalla.

6 REDIRECT EXAMINATION

7 BY MS. BHALLA:

8 Q. Mr. Delgado, is the tier time something
9 that changed, or something that stayed the same?

10 A. What do you mean?

11 Q. Well --

12 A. Well, each day a certain tier would go
13 out, and the bottom one would stay in, and they
14 would take, like, them out to yard, and then they
15 would have tier time --

16 Q. Okay.

17 A. -- and then lock them back down. And then
18 we did tier time, you know what I mean? And they
19 would split sections.

20 Q. And I think what I'm trying to figure out,
21 is that schedule something that was the same every
22 day for the entire time that you were in custody, or
23 is that something that changed?

24 A. No, it was the same thing.

25 Q. It was the same thing?

1 A. At one point they did open the whole --
2 but it was only like for a week that they opened up
3 the whole -- the whole pods. They opened up top and
4 bottom, but it was only like for a week.

5 Q. And that's -- okay.

6 A. Yeah.

7 Q. And you never saw -- did you ever see
8 Carlos pass paperwork under the door?

9 A. No, I never did.

10 Q. And did you ever see Carlos talk to Lupe
11 Urquizo outside of his cell?

12 A. No.

13 Q. Okay. And when you were next door to
14 Carlos, could you all talk through the vents?

15 A. Yes.

16 Q. Okay. And could you hear the people below
17 you?

18 A. No.

19 Q. Okay. Like, I mean, through the vents.
20 Could people talk through the vents from the bottom
21 to the top?

22 A. You could kind of try to talk through a
23 top vent, but you can't really hear because it's
24 always blowing, you know what I mean?

25 Q. Okay. And so you knew nothing about the

1 Javier Molina murder before it happened?

2 A. No, ma'am.

3 Q. Is that something you think you might have
4 known about?

5 MR. BECK: Objection, Your Honor,
6 foundation.

7 MS. BHALLA: I asked him if it was
8 something he might have known about.

9 THE COURT: Well, I think we've covered
10 this ground. But I think I allowed the question
11 earlier. So I'll allow it here. Overruled.

12 BY MS. BHALLA:

13 Q. Is it something that you think you might
14 have known about ahead of time?

15 A. No.

16 Q. Okay. And do you say that because you
17 didn't know anything about it ahead of time?

18 A. Yeah.

19 Q. Okay. And you were surprised?

20 A. Yeah. All of us were surprised.

21 Everybody was.

22 MS. BHALLA: Okay. Thank you, Your Honor.
23 Pass the witness.

24 THE COURT: Thank you, Ms. Bhalla. Any
25 other defendants --

1 MS. FOX-YOUNG: No, Your Honor.

2 THE COURT: -- have anything?

3 All right. Mr. Delgado, you may step
4 down.

5 Is there any reason Mr. Delgado cannot be
6 excused from the proceedings?

7 MS. BHALLA: No, Your Honor.

8 MR. BECK: Not from the Government.

9 THE COURT: Not hearing any objection, Mr.
10 Delgado, you are excused from the proceedings.
11 Thank you for your testimony.

12 All right. Do the defendants have their
13 next witness or evidence?

14 MR. VILLA: Yes, Your Honor. The
15 defendant Perez calls Benjie Montano. He's being
16 brought up, Your Honor.

17 THE COURT: It's going to be right on
18 break time. Do you want to take it now, or do you
19 want to get started with him? What would you
20 prefer?

21 MR. VILLA: It's the Court's pleasure,
22 Your Honor.

23 THE COURT: If we can get him in here,
24 we'll get him started.

25 MS. ARMIJO: Your Honor, may we approach?

1 THE COURT: Yeah, I'm wondering if we
2 ought to just take a break here before we -- let's
3 just take a break. Let's just take a break.

4 All right. All rise.

5 (The jury left the courtroom.)

6 THE COURT: Let me let Ms. Bean take her
7 break, then I'll take up your comments.

8 MS. ARMIJO: I think it's important before
9 the next witness.

10 THE COURT: All right. We'll be in recess
11 for about 15 minutes.

12 (The Court stood in recess.)

13 THE COURT: All right. Let's go on the
14 record.

15 Ms. Armijo, is there something you need to
16 raise?

17 MS. ARMIJO: I believe -- we believe Mr.
18 Montano needs an attorney for this.

19 MR. VILLA: He's here.

20 MS. ARMIJO: Is he? Oh, okay.

21 Your Honor, I just wanted to inform the
22 Court, and inform his attorney, that I didn't put
23 two and two together, but Mr. Montano was actually a
24 large focus of what I will call Phase 3, that we did
25 in this case in September of last -- '16.

1 September of '16, there were 12 search
2 warrants served. His house was actually on the
3 front page of the Albuquerque Journal, that we did
4 in reference to threats on witnesses in this case.
5 It was directly related to this case.

6 He is a felon several times over. In
7 fact, when the FBI was investigating him, ATF came
8 and arrested him on federal charges. That aside,
9 there were two firearms that were found in his
10 house. They were turned over to APD. And one of
11 the firearms is believed to be involved in an APD
12 officer-involved shooting. Was the officer killed?
13 No, a shooting. Oh, a soldier was robbed at an ATM
14 machine, I'm sorry. And so he's also related to one
15 of the witnesses that testified in this case.

16 So we will be getting into all of that,
17 especially since it's related directly to this case
18 and witnesses to this case. And the search warrant
19 was -- like I said, the firearm charges are still
20 potentially pending. They were just turned over to
21 the state.

22 THE COURT: All right. Anything else we
23 need to discuss?

24 MS. DUNCAN: Yes, Your Honor. Your Honor,
25 this witness is like Mr. Clark. I think he's being

1 called by Mr. Villa for a very narrow purpose, to
2 talk about a statement that Mr. Cordova made about
3 the murder of Shane Dix. In the report that's been
4 disclosed to us in discovery, he made statements
5 about Mr. Baca. So we would ask the Court to limit
6 the scope of cross-examination in the American Rule,
7 not to mention Mr. Baca, or to grant us a severance.

8 THE COURT: Well, I'm not going to grant a
9 severance. And so I'll just apply the American Rule
10 as faithfully and fairly as I possibly can.

11 MS. JACKS: And, Your Honor, Mr. Sanchez
12 joins in Ms. Duncan's objection, and notes that the
13 report also mentions Mr. Sanchez, and we would join
14 in the request for a severance.

15 MR. MAYNARD: And the same with respect to
16 Mr. Herrera.

17 THE COURT: All right. Severance motions
18 are denied. I'll work very hard to apply fairly and
19 faithfully the American Rule.

20 MS. ARMIJO: Can we find out, is he still
21 going to testify?

22 MR. VILLA: Yes, Judge, he's going to
23 testify.

24 THE COURT: All right. Who do we have
25 outside --

1 MS. JACKS: Your Honor, before the jury
2 comes in, I just have one matter. I believe -- I'm
3 not an expert on this, but I believe that Ms. Armijo
4 may be referring to Benji Marquez, and not this
5 witness. So I guess, before any questions are asked
6 of that nature, I would think she needs to verify
7 the identity of the person of whom she's speaking.

8 THE COURT: All right. Make sure you have
9 a good-faith basis for asking any questions in open
10 court.

11 All rise.

12 (The jury entered the courtroom.)

13 THE COURT: All right, everyone be seated.
14 We're going to get the next witness up
15 here. He'll be here in just a second. While we're
16 waiting for the witness, I want to see the lawyers
17 up here at the bench -- he's here. Go ahead. I'll
18 talk to you later.

19 All right. Mr. Montano, if you'll stand
20 next to the witness box right here in front of you.
21 If you'll raise your right hand to the best of your
22 ability, Ms. Standridge, my courtroom deputy, will
23 swear you in.

1 BENJIE MONTANO,
2 after having been first duly sworn under oath,
3 was questioned, and testified as follows:

4 THE CLERK: Please be seated. State and
5 spell your name for the record.

6 THE WITNESS: Benjie Montano, B-E-N-J-I-E,
7 M-O-N-T-A-N-O.

8 THE COURT: Mr. Montano.
9 Mr. Villa.

10 DIRECT EXAMINATION

11 BY MR. VILLA:

12 Q. Mr. Montano, good afternoon. Do you know
13 an individual by the name of Billy Cordova?

14 A. I do.

15 Q. And did Billy Cordova brag to you that he
16 participated in the murder of Shane Dix?

17 A. I plead the Fifth.

18 Q. I'm sorry, what's that?

19 A. I plead the Fifth -- Fifth Amendment.

20 Q. Well, let me ask you this: Do you
21 remember giving an interview to the FBI in March --
22 excuse me, 26, 2013?

23 A. (Nods.)

24 Q. Is that yes?

25 A. Yeah, it is.

1 Q. And you made some statements to the FBI
2 about Billy Cordova?

3 A. Yeah.

4 Q. And is it your intention to plead the
5 Fifth Amendment to every question that I ask you
6 about what you told the FBI Billy Cordova said about
7 Shane Dix?

8 A. I don't really even know what to say
9 there, because I'm kind of being targeted by them,
10 too. So that was my reason for pleading the Fifth
11 Amendment. But --

12 Q. Okay. I guess the question I have is:
13 Will you answer questions about whether Billy
14 Cordova bragged to you that he participated in the
15 murder of Shane Dix?

16 A. I didn't want to, no.

17 Q. You won't answer my questions?

18 A. I don't want to, no.

19 Q. I understand you might not want to, and
20 that's okay. But my question --

21 A. Ask.

22 Q. Did Billy Cordova brag to you about
23 participating in the murder of Shane Dix?

24 A. He did.

25 Q. He did?

1 A. He did.

2 MR. VILLA: No further questions.

3 THE COURT: Thank you, Mr. Villa.

4 Ms. Armijo -- let me see if any other
5 defendants have any direct examination of Mr.
6 Montano.

7 MS. DUNCAN: No, Your Honor.

8 THE COURT: All right. Ms. Armijo?

9 CROSS-EXAMINATION

10 BY MS. ARMIJO:

11 Q. Good afternoon, Mr. Montano.

12 A. Good afternoon.

13 Q. Are you currently serving a sentence?

14 A. I'm not.

15 Q. Okay.

16 A. I'm out of MDC. I'm not serving no
17 sentence.

18 Q. I'm sorry?

19 A. I'm out of MDC, the county jail, MDC, over
20 something else. No, I'm not serving a sentence of
21 any kind.

22 Q. Okay. But you are currently in custody,
23 correct?

24 A. I am.

25 Q. How many prior felonies do you have?

1 A. I wouldn't know exactly.

2 Q. Okay. When was your first prior felony
3 conviction?

4 A. Probably when I was like 13, 14.

5 Q. How old are you now?

6 A. 40.

7 Q. All right. And how many years have you
8 spent incarcerated?

9 A. Quite a few, over 10.

10 Q. Okay. Were you convicted in 1997 of
11 kidnapping?

12 A. I was.

13 Q. And aggravated battery against a household
14 member?

15 A. Yeah, I think so, I was.

16 Q. Do you have an escape in 1998, as well?

17 A. I do.

18 Q. And they sent you to prison; correct?

19 A. Correct.

20 Q. And when did you become an SNM member?

21 A. Around that time --

22 MR. ABRAMS: Objection, Judge. May we
23 approach?

24 (The following proceedings were held at
25 the bench.)

1 MR. ABRAMS: A couple of things, Judge.
2 First, this is outside the scope of direct.

3 THE COURT: Well, I think I'm allowing a
4 little impeachment. Once he takes the stand and
5 testifies, then he can be impeached to test his
6 credibility, bias, and prejudice. So I'll be
7 careful not to -- I'll sustain the objection if it
8 gets out of the scope of the direct. But as far as
9 impeachment, and as far as bias and prejudice, I'm
10 going to have to give the Government a little
11 leeway. So I'll have to just take these questions
12 one at a time.

13 MR. ABRAMS: So, Judge, my understanding
14 up until now, it's background information. Maybe I
15 didn't hear this right, but his last question --

16 THE COURT: The last question was --
17 probably might have used a little foundation, but it
18 basically was: When did you become an SNM member?

19 MR. ABRAMS: So the only problem here is,
20 the question is presented like this: He doesn't
21 have a time to make a determination to assert the
22 Fifth Amendment.

23 THE COURT: Why don't do you this: Why
24 don't you talk to him and tell him he needs to give
25 you a little bit of time to object. And I'll tell

1 him when we come out of the mute button on top here
2 to pause a little bit to allow you to object, and
3 take it a question at a time. Does that work for
4 you?

5 MR. ABRAMS: Yes, Your Honor.

6 THE COURT: All right. Thank you,
7 Mr. Abrams.

8 (The following proceedings were held in
9 open court.)

10 THE COURT: All right. Mr. Montano, when
11 Ms. Armijo asks you a question, just pause a second
12 before you answer it, so that will give your
13 attorney, Mr. Abrams, a little bit of time to decide
14 whether he needs to object, talk to you, or instruct
15 you, or something like that.

16 A. All right.

17 THE COURT: Just pause a little bit, give
18 him a little bit of time.

19 A. All right.

20 THE COURT: If you don't hear anything
21 from him, go ahead and answer the question. But
22 just pause just a second.

23 A. All right.

24 THE COURT: All right. Ms. Armijo?
25

1 BY MS. ARMIJO:

2 Q. When did you become an SNM member?

3 A. A long --

4 MR. ABRAMS: Objection, Judge. May we
5 approach?

6 THE COURT: You may.

7 (The following proceedings were held at
8 the bench.)

9 MR. ABRAMS: Judge, I probably should have
10 asked this before. How do you want to approach this
11 logistically? Because I assume the questions will
12 be of this nature. Have him assert the Fifth?

13 THE COURT: Why don't you say the word
14 "Object," and then why don't you say, "I'm going to
15 instruct Mr. Montano not to answer that question."
16 Then I'll probably ask him, is he going to follow
17 your advice. If he says yes, then it will depend on
18 the question -- I mean, some questions I might not
19 sustain the objection. But if it seems to me to be
20 one that might endanger his Fifth Amendment rights,
21 then I'll probably say, "I'll not require Mr.
22 Montano to answer that question." Does that work
23 for you?

24 MR. ABRAMS: Yes, Judge, thank you.

25 (The following proceedings were held in

1 open court.)

2 THE COURT: All right. Ms. Armijo.

3 BY MS. ARMIJO:

4 Q. What year did you become an SNM member?

5 MR. ABRAMS: Objection, Judge. I'm going
6 to instruct my client to assert his right under the
7 Fifth Amendment.

8 THE COURT: Mr. Montano, are you going to
9 follow your counsel's advice on that question?

10 A. I am.

11 THE COURT: I'm not going to require Mr.
12 Montano to answer that question. So I'll sustain
13 the objection.

14 BY MS. ARMIJO:

15 Q. When you were housed -- well, let me go
16 back to this. Were you interviewed by the FBI in --
17 how many times were you interviewed by the FBI in
18 reference to SNM activities?

19 A. I think every time that we come back
20 through RDC, we're interviewed by the FBI.

21 Q. Okay.

22 A. Every one of us, just about.

23 Q. Okay. And how many times did you do a
24 sit-down and talk about SNM activities with the FBI?

25 A. Probably about two, three.

1 Q. All right. And in reference to those
2 times, would the FBI talk -- would you talk to the
3 FBI about SNM activities?

4 MR. VILLA: Objection, outside the scope.

5 MS. ARMIJO: It's directly --

6 THE COURT: Overruled.

7 BY MS. ARMIJO:

8 Q. Did you talk to the FBI about SNM
9 activities?

10 A. They do ask, nothing but questions about
11 the FBI.

12 Q. And did you answer those questions?

13 A. Some.

14 Q. All right. And how is it, then, that you
15 were able to answer the FBI's questions about SNM
16 activities? What's the basis of your knowledge?

17 MR. VILLA: Objection, outside the scope.

18 THE COURT: Overruled.

19 MR. ABRAMS: Judge, again, objection, and
20 request that Mr. Montano assert his Fifth Amendment
21 right.

22 THE COURT: Well, on this particular
23 question, I think we can maybe lay some foundation
24 that doesn't endanger his Fifth. Let's try it. If
25 you still think it endangers his Fifth, we'll go,

1 but I think the question is, he's being asked, how
2 do you know about the SNM Gang.

3 And let me ask a foundational question.
4 Do you know anything about the SNM gang?

5 A. As far as --

6 THE COURT: Do you have any problem with
7 him answering that question?

8 MR. ABRAMS: Could I have a second, Judge?

9 THE COURT: Yes, you may.

10 MR. ABRAMS: Yes.

11 The question is: Do you know anything
12 about the SNM Gang?

13 A. I do.

14 THE COURT: You don't have to tell me
15 what. Just you do know something about them; right?

16 A. Right.

17 THE COURT: Then the next question is:
18 How do you know? And in answering that question, is
19 there a portion of that, in answering that question
20 that, to be truthful, you would want to assert the
21 Fifth?

22 MR. ABRAMS: No, Judge, we're okay.

23 THE COURT: You're okay with that?

24 MR. ABRAMS: Yes, Judge.

25 THE COURT: So then I think the question

1 Ms. Armijo is asking is: How do you know something
2 about the SNM Gang?

3 A. The SNM Gang is a prison gang that is very
4 big in prison here in New Mexico. And there is no
5 way of not doing time without knowing about the SNM
6 Gang, no?

7 BY MS. ARMIJO:

8 Q. All right. And would you agree that --
9 did SNM members tell you about their activities?

10 MR. VILLA: Objection, outside the scope.

11 THE COURT: Overruled.

12 BY MS. ARMIJO:

13 Q. Did SNM members tell you about their
14 activities, SNM activities?

15 A. I've heard. I've heard over the years.
16 They're saying things, yeah.

17 Q. Well, you've heard quite a bit about it,
18 correct?

19 A. Yeah, I done quite a few years. I've
20 learned quite a bit about them.

21 Q. And in those few years that you've done,
22 you've been housed with SNM members; correct?

23 A. Correct.

24 Q. And are you a validated SNM member by the
25 Prisons?

1 MR. ABRAMS: Objection, Judge.

2 THE COURT: I think this is a similar
3 question. Are you going to follow your counsel's
4 advice?

5 A. I am.

6 THE COURT: So I will not require Mr.
7 Montano to answer this question.

8 BY MS. ARMIJO:

9 Q. So you indicated that you have stayed in a
10 pod with SNM members?

11 A. I have.

12 Q. Okay. And is that where you have learned
13 your information about SNM activities?

14 A. Yes.

15 Q. And do SNM members then tell you about
16 their activities?

17 A. No, not really. No, they don't.

18 Q. Are you saying you don't know about their
19 activities?

20 A. What activities? I mean, I don't --

21 Q. Okay. Then let me ask -- let me be
22 specific, then. Okay. SNM is a prison gang,
23 correct?

24 A. Correct.

25 Q. Would you agree that it's a violent prison

1 gang?

2 MS. DUNCAN: Objection; this is beyond the
3 scope of direct.

4 THE COURT: Sustained.

5 MS. ARMIJO: Your Honor, may we approach?

6 THE COURT: You can, but I probably am
7 going to still sustain the objection.

8 BY MS. ARMIJO:

9 Q. All right. Let me just ask you this: You
10 testified on direct about something that Billy
11 Cordova told you about Shane Dix; correct?

12 A. Correct.

13 Q. Okay. Who is Billy Cordova?

14 A. Shadow, correct?

15 Q. Is he an SNM Gang member?

16 A. I just know him as Shadow. I mean, I know
17 who he is. He's been in the same pod as me.

18 Q. Okay. The SNM pod?

19 A. Yeah, I guess you can call it -- yeah,
20 it's a validated Level 4, yeah.

21 Q. What was your nickname?

22 A. My nickname is Joker.

23 Q. Joker?

24 A. It was, yeah.

25 Q. Okay. And when did this conversation

1 occur?

2 A. It's been years. It's been a couple of
3 years, 2013, '14, something.

4 Q. Okay. And you spoke to the FBI -- let's
5 see, when was the most recent time that you spoke to
6 the FBI?

7 A. About the same time, when I was in that
8 same unit --

9 Q. Okay.

10 A. -- and I got back.

11 Q. And what you spoke to the FBI about,
12 specifically, including possibly Billy Cordova, was
13 SNM; correct?

14 A. Was SNM, yeah.

15 Q. And would you not agree with me that in
16 order to know all these things, that you would have
17 to be close with SNM Gang members?

18 A. Not necessarily, no, because people talk.
19 It don't necessarily have to be SNM.

20 Q. Is it an SNM rule not to admit that you're
21 an SNM member? Do you know that?

22 A. I guess you can -- I don't see it written
23 anywhere. I mean, you can admit it, you can not
24 admit it.

25 Q. Okay. When you first came in, one of the

1 first questions that was asked to you, you pleaded
2 the Fifth. Do you recall that?

3 A. I do.

4 Q. Okay. And then -- I wrote this down --
5 you said, I don't want to be here, or to testify
6 because you're being targeted by them, too. Is that
7 what you said?

8 A. By the FBI, too, I said.

9 Q. Okay. Well, you said, I don't want to
10 testify because I'm being targeted by them, too.

11 A. By the FBI -- by the FBI, too.

12 Q. By the FBI, too?

13 A. I never said them, as -- if you're meaning
14 by the SNM, no, I meant the FBI. I said I don't
15 know if I can answer that because I'm being targeted
16 by them, too. And I meant the FBI.

17 Q. Okay. So you believe you're targeted by
18 the FBI?

19 A. I do.

20 Q. Okay. And why would the FBI target you?

21 A. They're --

22 MR. VILLA: Objection, outside the scope.

23 THE COURT: Well, I'll allow the question.

24 BY MS. ARMIJO:

25 Q. Why would the FBI target you?

1 A. I don't know. Apparently, there is a lot
2 of paperwork going around that's supposedly was
3 written by the FBI. So --

4 Q. What's paperwork?

5 A. Paperwork is like paper, paperwork.

6 Q. Okay.

7 A. A stack of paperwork right there in front
8 of me.

9 Q. Oh. But you just said there is a lot of
10 paperwork by the FBI. What type of paperwork were
11 you referring to?

12 A. I was referring to the paperwork that I
13 was told about -- about this, that. I looked at the
14 label. It said something about it.

15 Q. Who told you about it?

16 A. My lawyer did.

17 MR. MAYNARD: Your Honor, this is going
18 way beyond the scope.

19 THE COURT: Overruled.

20 BY MS. ARMIJO:

21 Q. Your lawyer told you about it?

22 A. I think that's my lawyer.

23 MR. VILLA: Objection, we're getting into
24 privileged conversations.

25 THE COURT: Hold on. We've got an

1 attorney here to handle it. So overruled.

2 BY MS. ARMIJO:

3 Q. Okay. So you feel that you're being
4 targeted?

5 A. I know I'm being targeted.

6 Q. Okay. How do you know you're being
7 targeted?

8 A. I'm on the streets. They have to be
9 federal agents. I don't have a knowledge of their
10 badges or badge numbers, anything else. I don't
11 know them by their faces. But I'm being followed,
12 I'm being targeted. I'm seeing all the same faces.
13 They are law enforcement of some kind. And I know
14 they're not APD.

15 Q. So you feel that people are following you
16 on the street?

17 A. Not people. These are either undercover
18 or they're agents of some kind.

19 Q. What did you say you were in custody in
20 on, what sort of minor infraction?

21 A. It's right here. It's larceny over \$5,
22 and assault and battery with a deadly weapon, which
23 nobody was hurt. I had a knife on me. Somebody
24 felt threatened.

25 Q. So you're facing charges right now?

1 A. I am.

2 Q. And you earlier said it was something
3 minor, correct?

4 A. It will be kicked out. I was supposed to
5 be in court, released today. But I'm here doing
6 this.

7 Q. Well, so you're still pending those
8 charges; correct?

9 A. Correct.

10 Q. And you said it was assault with a deadly
11 weapon?

12 MR. VILLA: Objection. These are pending
13 charges.

14 A. Assault with a deadly weapon.

15 BY MS. ARMIJO:

16 Q. Okay. Would you not agree with me that,
17 given your criminal history -- and we can keep going
18 through your criminal history -- but those are
19 serious charges that you could face a great deal of
20 time for?

21 A. If they were true, yes.

22 Q. Well, if you're convicted of it.

23 A. There is camera, there is footage. I'll
24 have my day in court.

25 Q. Okay. And my question is, then: If you

1 are convicted, as charged, with your criminal
2 history, that's not a minor matter; is it?

3 A. It's a three-year offense.

4 Q. Three years? Aggravated assault with a
5 deadly weapon?

6 A. Yeah.

7 Q. Really? With your criminal history, have
8 you ever heard of enhancements?

9 A. There is an enhancement, I was told about,
10 I think maybe a one year, maybe the four. I'm not
11 sure. I'm not sure with the enhancements and all
12 this, but --

13 Q. Okay. Let's just assume that it's three
14 years --

15 A. Okay.

16 Q. -- I'm just assuming that, and you have a
17 couple years enhancement. That's five years. Is
18 that a minor offense to you?

19 A. It's a slap on the hand, yeah.

20 Q. All right. So you -- and when did that
21 incident occur?

22 A. That was this last year.

23 Q. What day?

24 A. I wouldn't even know. I don't keep track
25 of the days. I'm not on parole/probation. Like I

1 told you, I have nowhere to be, so I don't worry
2 about the date, the time.

3 Q. This last year, meaning 2017?

4 A. Correct.

5 Q. Was it in the summer?

6 A. It was in summer, yeah, something like
7 that.

8 Q. So you've been in custody since the
9 summer; correct?

10 A. Yeah. Yes, I spent the whole summer, as a
11 matter of fact.

12 Q. In custody?

13 A. In custody.

14 Q. Up until today?

15 A. Up until today.

16 Q. Okay. Now, going back to this -- and I
17 don't want -- the conversation that you had with the
18 FBI, in 2013, that was a voluntary statement;
19 correct?

20 A. Correct.

21 Q. Okay. You agreed to sit down with the
22 FBI, and give information. And I know -- and we'll
23 get to the Billy Cordova thing. But that isn't the
24 only -- and I don't want you to tell me what else
25 you said, but that isn't the only information you

1 gave; correct?

2 A. I guess, correct.

3 MR. MAYNARD: Objection, Your Honor.

4 We're going way beyond the scope.

5 THE COURT: Overruled.

6 BY MS. ARMIJO:

7 Q. Correct?

8 A. I guess, correct. I don't understand
9 exactly what you mean, but --

10 Q. Okay. You sat down voluntarily with the
11 FBI; correct?

12 A. I don't know if it's voluntary. But they
13 do pull you out -- I don't know if you're familiar
14 exactly how they pull you out, when you return to
15 prison --

16 Q. But you had the option of telling them:
17 Pound sand, take a hike, I don't want to talk to
18 you? You have that option; correct?

19 A. Yes.

20 Q. And yet, you didn't take that option, you
21 sat down and you spoke to them; correct?

22 A. Yeah, I did.

23 Q. And, in addition to the one thing that you
24 testified about, you gave them information on a lot
25 of other things?

1 A. We talked.

2 Q. You talked voluntarily, correct?

3 A. Correct.

4 Q. Okay. On more than just the incident that
5 you're going to talk about, that you've already
6 talked about today; correct?

7 A. Correct.

8 Q. Okay. And are you aware, from hanging
9 around SNM Gang members, that talking to law
10 enforcement is not something that's looked upon
11 favorably?

12 A. Correct.

13 Q. So that is something that somebody in good
14 standing with the SNM, if you were a member -- I
15 know you're not answering that -- but if you were a
16 member, you shouldn't have been sitting down with
17 the FBI; correct?

18 A. No, that's not correct. I have no daddy;
19 nobody tells me what to do or who I can and can't
20 talk to.

21 Q. So you don't think there is anything wrong
22 with you sitting down with the FBI and giving them a
23 lot of information about the SNM?

24 A. Whether it's wrong or whether it's not,
25 like I told you, I have no daddy. Nobody tells me

1 who I'm going to talk to, who I'm not going to talk
2 to, whether they like it or not. I mean --

3 Q. Okay.

4 A. -- whether there's consequences or not.

5 Q. Well, then, if you don't have any daddies,
6 and you're not worried about anything, are you an
7 SNM Gang member?

8 MR. VILLA: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MS. ARMIJO:

11 Q. The information -- Billy Cordova, were you
12 close to him?

13 A. Not really, no. I just met him there.

14 Q. Okay. Do you know who Shane Dix was?

15 A. No, I don't.

16 Q. Okay. Do you know Chris Garcia?

17 A. I do.

18 Q. Okay. Who is Chris Garcia?

19 MR. VILLA: Objection, outside the scope.

20 THE COURT: How is this related to --

21 MS. ARMIJO: Chris Garcia pled guilty to
22 the Shane Dix murder.

23 MR. VILLA: Then, Your Honor, I didn't ask
24 him about this.

25 THE COURT: Yeah, sustained.

1 BY MS. ARMIJO:

2 Q. Do you know -- so did you know anything
3 about the Shane Dix murder?

4 A. Not really, no.

5 Q. Okay. And you said that Billy Cordova
6 told you something in reference to it. Did he give
7 you details about it?

8 A. No.

9 Q. Did he tell you when it occurred?

10 A. No.

11 Q. Did he tell you where it occurred?

12 A. No.

13 Q. Did he tell you any details about it?

14 A. Did you say -- the last two questions
15 back, if it had occurred. I think he said it
16 occurred. There were no details, or nothing like
17 that.

18 Q. He didn't give you any details?

19 A. No.

20 Q. Nothing?

21 A. Nothing.

22 Q. But you're still able to remember the name
23 of the victim?

24 A. I know who Shane Dix is. I think people
25 who don't know him personally, know who he was.

1 Q. I'm sorry. I thought I asked you if you
2 knew who Shane Dix was. Did you know Shane Dix?

3 A. I thought what you meant was did I know
4 him, like personally, did I know who he was. When
5 you asked me if I know who that is, I'm assuming you
6 say like somebody I done time with, or sat there and
7 drank coffee with, and shared a few laughs. And
8 that's -- when we talk in prison, we don't say, hey,
9 I know him unless we sat there, and, you know --

10 Q. Okay. Well, let me just make it very
11 clear. In any way do you know who Shane Dix was?

12 A. I just know who he was. I don't know --

13 Q. Who was he?

14 A. He was just somebody who ended up getting
15 killed. I think he was maybe from Padillas, or
16 something. That's all I really know about him.

17 Q. And when was he killed?

18 MR. VILLA: Calls for hearsay.

19 A. A long --

20 THE COURT: Overruled. Ask him how he
21 knows. Do you know from your personal knowledge
22 that he was killed? Were you there? Did you see
23 it?

24 A. I wasn't there, no.

25 THE COURT: So the information you would

1 receive would come from other people?

2 A. It was always, yeah, hearsay.

3 THE COURT: All right. Sustained.

4 BY MS. ARMIJO:

5 Q. Well, the information that you gave
6 police, specifically about Shane Dix, also indicates
7 Chris Garcia.

8 MR. VILLA: Objection, outside the scope.

9 THE COURT: Sustained.

10 MS. ARMIJO: So, Your Honor, am I not
11 allowed to ask him about what he said about the
12 Shane Dix murder?

13 THE COURT: You can ask about Shane Dix,
14 but you can't ask the question that you just asked.

15 BY MS. ARMIJO:

16 Q. Okay. Let me just ask it this way: What
17 did you tell the FBI? And I want to hear everything
18 that you told the FBI about the Shane Dix murder.

19 A. Okay. You come into Central. You're
20 interviewed by the FBI when they assume that you're
21 a prison gang. They are the ones who ask you if
22 know about this, that, and some other things. You
23 don't just sit there and start telling them a bunch
24 of wa, wa, wa.

25 They'll ask you: Have you ever heard

1 anything about wa this, wa that. And they'll start
2 telling you things like: Your name has come up, or
3 it hasn't come up or -- that's how that conversation
4 came up.

5 Q. Okay. And what did you tell them in
6 reference to Billy Cordova?

7 A. I don't exactly remember. That's been --
8 it's been years.

9 MS. ARMIJO: Your Honor, may I approach
10 the witness?

11 THE COURT: You may.

12 MS. ARMIJO: And I'm on Bates -- I printed
13 a non-redacted page, sorry.

14 BY MS. ARMIJO:

15 Q. This last sentence, okay? Do you remember
16 making that statement?

17 A. I do.

18 Q. Okay. And just so that we're clear, there
19 are other things that you said there about Shane
20 Dix, correct, but I'm just looking at this one
21 statement?

22 A. I just read that.

23 MS. ARMIJO: May I approach, Your Honor?

24 THE COURT: You may.

25

1 BY MS. ARMIJO:

2 Q. First off, I don't want to -- now, I'm
3 just going to be asking you -- the Judge has
4 sustained objections about other things -- about
5 this last sentence. Okay?

6 A. Okay.

7 Q. Now, what you actually told the FBI was
8 that SNM Gang member, Billy Cordova -- okay, so you
9 knew that Billy Cordova was an SNM Gang member;
10 correct?

11 A. Correct.

12 Q. Okay. Was bragging about participating in
13 the murder of Shane Dix; correct?

14 A. Correct.

15 Q. Okay. Now, would you agree with me that
16 you can participate in different ways in a murder;
17 correct?

18 A. Correct.

19 Q. Okay. You can have people that
20 participate by actually doing the murder; correct?

21 A. Correct.

22 Q. And you can have people participate in
23 other ways, like supplying a gun, or setting it up;
24 correct?

25 A. Correct.

1 Q. But what you indicated was just that he
2 told you about participating in it; correct?

3 A. Can you tell me again?

4 Q. Okay. What you indicated was that Billy
5 Cordova was bragging about participating; correct?

6 A. Correct.

7 Q. You did not say to the FBI that he
8 admitted to you that he actually killed him?

9 A. If can you repeat that again? I didn't
10 understand --

11 Q. Okay.

12 A. -- how you're saying it.

13 Q. Okay. It is not in this report that you
14 told the FBI that Billy Cordova told you that he was
15 the one that actually shot Shane Dix?

16 A. I don't remember if he actually said he
17 shot him.

18 Q. Okay. Because what is put down here is
19 just participating; correct?

20 A. I think it said participating.

21 Q. Do you even know how Shane Dix was killed?

22 A. I don't.

23 MS. ARMIJO: All right. If I may just
24 have a moment?

25 THE COURT: You may.

1 MS. ARMIJO: That's all I have. Thank
2 you, Your Honor.

3 THE COURT: Thank you, Ms. Armijo.
4 Any other defendants have redirect?
5 All right. Mr. Villa.

6 REDIRECT EXAMINATION

7 BY MR. VILLA:

8 Q. So Mr. Montano, if I understand it, you
9 don't know what the circumstances were of Shane Dix'
10 death?

11 A. I don't.

12 Q. But you know that Billy Cordova bragged to
13 you about his participation in the death?

14 A. Correct.

15 Q. And if Mr. Cordova had actually not
16 participated in that murder, then him bragging to
17 you would be taking credit for something he didn't
18 do, wouldn't it?

19 MS. ARMIJO: Objection, calls for
20 speculation.

21 THE COURT: Overruled.

22 A. If you can tell me that again. I didn't
23 understand it.

24 BY MR. VILLA:

25 Q. Yes, sir. If Mr. Cordova actually didn't

1 participate in the murder of Shane Dix, his bragging
2 to you about taking credit for it -- or excuse me,
3 let me start over.

4 If Mr. Cordova didn't actually participate
5 in the murder in real life, he didn't do it, right,
6 he wasn't involved, he didn't participate, but he
7 bragged to you that he did, he'd be taking credit
8 for something he didn't do; right?

9 A. Right.

10 MR. VILLA: No questions.

11 THE COURT: Thank you, Mr. Villa.

12 Any other defendants?

13 All right. Mr. Montano, you may step
14 down.

15 Is there any reason that Mr. Montano
16 cannot be excused from the proceedings?

17 MR. VILLA: He's free to go.

18 THE COURT: Everyone in agreement on the
19 defense side?

20 MS. JACKS: Yes.

21 THE COURT: All right. How about you, Ms.
22 Armijo? Can Mr. Montano be excused?

23 MS. ARMIJO: We'll keep him.

24 THE COURT: All right. You'll stay under
25 subpoena, Mr. Montano. You're free to leave the

1 courthouse, but you may be subject to recall. Thank
2 you for your testimony.

3 Thank you, Mr. Abrams.

4 All right. Do the defendants have their
5 next witness or evidence?

6 MS. FOX-YOUNG: Yes, Your Honor. Mr.
7 Perez calls Paul Valenzuela.

8 MS. DUNCAN: Your Honor, can we approach
9 before we call this witness?

10 THE COURT: You may.

11 (The following proceedings were held at
12 the bench.)

13 MS. DUNCAN: Your Honor, this is another
14 one of Mr. Perez' witnesses who makes statements
15 against Anthony Ray Baca. So we are objecting to
16 any cross-examination about him, and would ask the
17 Court to limit the scope or to grant us a
18 mistrial -- not a mistrial, a severance.

19 THE COURT: Well, I'm not going to grant a
20 severance. But I'll be careful to the questions
21 faithfully and fairly, as best I can by the American
22 Rule, and we'll see if it implicates anything that's
23 going to be testified against Mr. Baca.

24 The last two witnesses, I don't think we
25 got into anything about Mr. Baca. So unless Ms.

1 Fox-Young goes beyond what they did prior, I
2 probably am not going to allow anything as to Mr.
3 Baca. But we'll just have to take it a question at
4 time.

5 MS. BHALLA: I think the same objection is
6 going to apply to Mr. Herrera, and also Mr. Sanchez.

7 MS. JACKS: We also join in the motion to
8 sever.

9 THE COURT: I'll deny the motions to
10 sever.

11 MR. BECK: Your Honor, the United States
12 moves to strike Benjie Montano's direct testimony.
13 He refused to admit he was an SNM member. It
14 strikes at the heart of bias and did not answer
15 questions truthfully. So this is not a collateral
16 matter in which some of the testimony may be
17 provided to the jury, because he pleaded the Fifth,
18 a collateral matter. This was the principal matter,
19 and is the principal basis for answering
20 untruthfully, his bias. He is an SNM member.

21 THE COURT: I certainly think him being an
22 SNM Gang member would have added marginally to the
23 impeachment. He was impeached in a lot of other
24 ways. And there was a full and robust impeachment.
25 I allowed a fair amount of impeachment in. And he

1 definitely had close friends with the SNM Gang
2 members, and knew a lot about it. And I think the
3 jury can infer that he was a member of the SNM.

4 But I don't think any additional testimony
5 that he was an SNM Gang member would have added much
6 to it. So I'm not going to strike the testimony of
7 Mr. Montano. I'll let it stand and rely on the fact
8 that I allowed a robust and vigorous
9 cross-examination as to his prejudice, bias, and
10 credibility.

11 (The following proceedings were held in
12 open court.)

13 THE COURT: All right.

14 Mr. Valenzuela, if you'll come up and
15 stand next to the witness box right here in front of
16 you, before you're seated, Ms. Standridge, my
17 courtroom deputy, will swear you in. So if you'll
18 raise your right hand to the best of your ability.

19 PAUL VALENZUELA,
20 after having been first duly sworn under oath,
21 was questioned, and testified as follows:

22 THE CLERK: Please be seated. State and
23 spell your name for the record.

24 THE WITNESS: Paul Valenzuela, P-A-U-L,
25 V-A-L-E-N-Z-U-E-L-A.

1 THE COURT: All right. Mr. Valenzuela;
2 your attorney, Mr. Jennings.

3 Ms. Fox-Young?

4 DIRECT EXAMINATION

5 BY MS. FOX-YOUNG:

6 Q. Good afternoon, Mr. Valenzuela. Are you
7 here today because Mr. Villa and I subpoenaed you to
8 testify in this case?

9 A. Yes, I am.

10 Q. And you traveled from a correctional
11 facility to be here, didn't you?

12 A. Yes, I did.

13 Q. And when you left that facility, did you
14 believe that there would be consequences for you
15 testifying?

16 THE COURT: Mr. Valenzuela, can you pull
17 that microphone up a little bit? Can you pull your
18 chair up so that your mouth is a little closer so we
19 can hear you?

20 Ms. Fox-Young?

21 MS. FOX-YOUNG: Thank you, Your Honor.

22 BY MS. FOX-YOUNG:

23 Q. When you left that facility, did you
24 believe that there would be consequences for you
25 from the New Mexico Corrections Department for

1 testifying as a defense witness in this case?

2 A. To an extent, yes.

3 Q. What did you believe those consequences
4 would be for testifying for the defense?

5 A. Me getting kicked out of the program and
6 whatever situation occurs with it, going back to the
7 North.

8 Q. Did you think you were going to lose good
9 time?

10 A. Yes.

11 Q. For testifying for the defense?

12 A. No, just for me being here.

13 Q. Here today, testifying for the defense?

14 A. Right.

15 Q. And so did you believe that the New Mexico
16 Corrections Department was retaliating against you
17 for being here?

18 A. I can't say that. I don't know for sure.

19 Q. Okay. At some point in 2013 or 2014, were
20 you housed at the Southern New Mexico Correctional
21 Facility?

22 A. Yes, I was.

23 Q. Can you tell me when you were at that
24 facility?

25 A. It was in 2014 of -- January, all the way

1 up till I paroled.

2 Q. Okay. So in the early part of 2014. And
3 do you remember Rudy Perez?

4 A. I do.

5 Q. And do you remember if Rudy Perez was
6 sick?

7 A. He was.

8 Q. Do you remember if Rudy Perez was in pain?

9 A. He -- I seen him with his walker.

10 Q. Okay. And for all the questions I'm
11 asking you, I don't want you to tell me anything
12 anybody told you. I'm just asking things that you
13 know personally, without --

14 A. I understand that.

15 Q. Okay. Thank you, sir. And so you saw him
16 with his walker, you said?

17 A. Correct.

18 Q. And was his sickness common knowledge
19 among the individuals who were housed at that prison
20 at that time?

21 MR. CASTELLANO: Objection, foundation and
22 hearsay.

23 THE COURT: Well, it's just a yes/no
24 question at this point.

25 A. I'm not sure.

1 BY MS. FOX-YOUNG:

2 Q. But you knew it?

3 A. Yeah.

4 Q. And Mr. Perez needed a walker to get
5 around?

6 A. Yes, he did.

7 Q. Did you ever see him in Medical at that
8 time?

9 A. A couple of times.

10 Q. Now, some time during this period that you
11 were at Southern New Mexico Correctional Facility,
12 do you remember talking to Captain Blanco?

13 MR. JENNINGS: Your Honor, I object, and
14 instruct Mr. Valenzuela to take the Fifth.

15 THE COURT: Why don't you come up here and
16 explain.

17 (The following proceedings were held at
18 the bench.)

19 THE COURT: I'm not asking you to reveal
20 any confidential discussions. But, Mr. Blanco -- is
21 there some reason why answering whether he spoke to
22 Officer Blanco would cause him to be in danger of
23 being prosecuted or something? I could understand
24 why he might not want to talk about talking to a
25 corrections officer for other reasons. But is there

1 something about that that might raise Fifth
2 Amendment concerns?

3 MR. JENNINGS: Judge, my concern is that
4 the question is going to be how he would know the
5 information that is going to be requested of him.
6 So when this question is asked: If you know Officer
7 Blanco, did you say anything to Officer Blanco, and
8 then his response is going to be yes or no. But if
9 he says yes, the question would be: How did you
10 acquire the information?

11 MS. FOX-YOUNG: Your Honor, I'm not going
12 to ask that. So maybe we should take it question by
13 question. But that's not a question I'm going to
14 ask.

15 THE COURT: Would it be possible, if we
16 just try it one at a time, if there is nothing
17 objectionable to this question, which is the one
18 that's pending before the witness is: Do you
19 remember talking to Captain Blanco? And that's all
20 that's there. Do you have a Fifth Amendment to that
21 single question? Then we'll take it one at a time.

22 MR. JENNINGS: Not to that single
23 question.

24 THE COURT: Let's try it one at a time.
25 If you need to object, that's your job. We all

1 understand it. But let's just take them one at a
2 time. We'll see what Ms. Fox-Young -- and she may
3 go in a direction that doesn't implicate anything
4 more, or she may ask that, and you're free to
5 reraise it.

6 (The following proceedings were held in
7 open court.)

8 THE COURT: All right.

9 Mr. Valenzuela, the question that's before
10 you, you are permitted to answer this question: Did
11 you say anything to Officer Blanco?

12 MS. FOX-YOUNG: Your Honor, I think the
13 question was: Do you remember talking to Captain
14 Blanco?

15 THE COURT: I may have pulled up a little
16 bit later here. All right. That's the question.
17 Do you remember talking to Captain Blanco?

18 A. Yes, I do.

19 BY MS. FOX-YOUNG:

20 Q. And I don't want you to, again, to tell me
21 anything that anybody else told you.

22 I'll represent to you that Captain Blanco
23 testified --

24 MR. CASTELLANO: I object to you referring
25 to other witness' testimony.

1 MS. FOX-YOUNG: It's in evidence, Your
2 Honor.

3 THE COURT: Well, what's the purpose of
4 telling this witness what was said out-of-court?

5 MR. CASTELLANO: Before she answers that,
6 it violates the rule of exclusion of witnesses. So
7 I don't want --

8 THE COURT: I think it might, too.

9 MS. FOX-YOUNG: That's fine, Your Honor.

10 THE COURT: All right. Ask the question.

11 BY MS. FOX-YOUNG:

12 Q. So you recall talking to Captain Blanco.
13 Was that in 2014?

14 A. Correct.

15 Q. Sitting here today, do you know what month
16 in 2014 that was?

17 A. Sometime in February.

18 Q. Okay. And do you recall telling Captain
19 Blanco about a threat on Javier Molina?

20 MR. CASTELLANO: Objection.

21 MR. JENNINGS: Your Honor, objection.

22 THE COURT: This is just a yes/no
23 question. Yes or no?

24 A. I did.

25 THE COURT: Hold on a second. Let me see

1 if Mr. Jennings --

2 MR. JENNINGS: Your Honor, I'm objecting,
3 again, on the same grounds, and instructing Mr.
4 Valenzuela to take the Fifth.

5 THE COURT: Well, I'm going to have to
6 sustain that objection.

7 MS. FOX-YOUNG: Okay.

8 THE COURT: Are you going to follow your
9 counsel's advice on the instruction?

10 A. Yes.

11 THE COURT: All right. So I'm not going
12 to require the defendant -- or not the defendant,
13 but Mr. Valenzuela, to answer that question.

14 MS. FOX-YOUNG: Your Honor, can I just be
15 clear on what the question was? I think -- I'm not
16 even sure I got to finish it.

17 THE COURT: Well, the question was: Do
18 you recall telling Captain Blanco about a threat on
19 Javier Molina?

20 MS. FOX-YOUNG: Okay. And you're
21 sustaining the objection, Your Honor?

22 BY MS. FOX-YOUNG:

23 Q. Can you tell me what, if anything,
24 happened after you talked to Captain Blanco, with
25 you?

1 A. I was locked up in segregation.

2 Q. You were sent to the hole?

3 A. Yes.

4 Q. How long were you in the hole?

5 A. A while. Till I paroled.

6 Q. Do you know -- can you estimate how many
7 months that was?

8 A. I couldn't tell you.

9 Q. Can you tell me if it was more than three
10 months?

11 A. Give or take.

12 Q. Something along those lines?

13 A. Yeah.

14 MS. FOX-YOUNG: Your Honor, just a moment.

15 THE COURT: Certainly.

16 MS. FOX-YOUNG: Your Honor, I'll pass the
17 witness.

18 THE COURT: All right. Thank you,
19 Ms. Fox-Young.

20 Do any of the other defendants have direct
21 examination of Mr. Valenzuela?

22 All right. Mr. Beck, do you have cross?
23 Mr. Castellano?

24 MR. CASTELLANO: May we have a moment,
25 Your Honor?

1 THE COURT: You may.

2 MR. CASTELLANO: Thanks, Your Honor.

3 There is no cross-examination.

4 THE COURT: Thank you, Mr. Castellano.

5 All right. Mr. Valenzuela, you may step
6 down.

7 THE WITNESS: Thank you.

8 THE COURT: Is there any reason Mr.
9 Valenzuela may not be excused from the proceedings?

10 MS. FOX-YOUNG: No, Your Honor.

11 THE COURT: Can he be excused?

12 MS. CASTELLANO: Yes, sir.

13 THE COURT: All right. Anybody else? No
14 objections?

15 Not hearing any, you're excused from the
16 proceedings. Thank you for your testimony.

17 Thank you, Mr. Jennings. I appreciate
18 your assistance.

19 MR. JENNINGS: Thank you, Your Honor.

20 THE COURT: All right. Do the defendants
21 have their next witness or evidence?

22 MR. VILLA: Yes, Your Honor. Mr. Perez
23 calls FBI Agent Nancy Stemo.

24 MS. DUNCAN: Your Honor, may we approach
25 before Agent Stemo testifies?

1 THE COURT: You may.

2 (The following proceedings were held at
3 the bench.)

4 MS. DUNCAN: Your Honor, I don't know if
5 Mr. Villa is planning to get into this.

6 Ms. Stemo interviewed the witness who just
7 pled the Fifth.

8 MR. VILLA: No.

9 MS. DUNCAN: Okay. Never mind.

10 THE COURT: All right.

11 (The following proceedings were held in
12 open court.)

13 THE COURT: All right. Ms. Stemo, if
14 you'll come up and stand next to the witness box on
15 my right, your left, before you're seated, my
16 courtroom deputy, Ms. Standridge, will swear you in.

17 NANCY STEM O

18 after having been first duly sworn under oath,
19 was questioned and testified as follows:

20 THE CLERK: Please be seated. State and
21 spell your name for the record.

22 THE WITNESS: Nancy Stemo. N-A-N-C-Y
23 S-T-E-M-O.

24

25

1 DIRECT EXAMINATION

2 BY MR. VILLA:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. How are you employed?

6 A. I'm an agent with the FBI.

7 Q. How long have you been with the FBI?

8 A. Approximately two years.

9 Q. Prior to that, were you in law
10 enforcement?

11 A. I was not.

12 Q. When you began with the FBI two years ago,
13 is that when you started the Academy?

14 A. No.

15 Q. When did you start the Academy?

16 A. May 2016.

17 Q. In the Academy you're trained, I imagine,
18 on all matter of things FBI, right?

19 A. Yes.

20 Q. Is one of the things you're trained on
21 report writing?

22 A. Yes.

23 Q. And specifically writing reports of
24 interviews done of people involved in criminal
25 cases?

1 A. Yes.

2 Q. What are you trained in that regard?

3 A. To ask people about what happened, and not
4 to do it in a way that is leading.

5 Q. And how about in terms of what you're
6 supposed to write down about what the people tell
7 you in those interviews?

8 A. We're supposed to write down what they
9 tell us to the best of our recollection.

10 Q. And try to be thorough?

11 A. Yes.

12 Q. Include everything that they told you?

13 A. Yes.

14 Q. Not leave anything out?

15 A. Yes.

16 Q. Be accurate?

17 A. Yes.

18 Q. Now, Agent Stemo you participated in the
19 investigation of the SNM; is that right?

20 A. Yes.

21 Q. Including defendants charged in this case,
22 not necessarily that are on trial today, but other
23 defendants that have been charged and have since
24 cooperated with the Government?

25 A. Yes.

1 Q. On October 24, 2017, did you interview
2 Mario Rodriguez?

3 A. I did.

4 Q. Mario Rodriguez is also known as Blue?

5 A. Correct.

6 Q. Can we see Government's 586? While we're
7 pulling that up, that interview was conducted here
8 in Las Cruces, correct?

9 A. Yes.

10 Q. At the federal courthouse, in fact?

11 A. It was.

12 Q. This courthouse?

13 A. Yes.

14 Q. And present -- well, now we've got
15 Government's 586. Is this Mario Rodriguez?

16 A. It is.

17 Q. That's the individual that we're talking
18 about, right?

19 A. Correct.

20 Q. And present for that interview was United
21 States Attorney Maria Armijo?

22 A. Yes.

23 Q. Also United States Attorney Randy
24 Castellano?

25 A. I believe so.

1 Q. You're not sure?

2 A. No.

3 Q. If I showed you the report you wrote for
4 that, would that refresh your recollection?

5 A. It would.

6 MR. VILLA: May I approach?

7 THE COURT: You may.

8 BY MR. VILLA:

9 Q. Just take a look at that. Don't read it
10 out loud, just read it to yourself.

11 A. Okay.

12 Q. Does that refresh your recollection?

13 A. It did.

14 Q. So Mr. Castellano, he was there?

15 A. He was.

16 Q. Mr. Beck was there?

17 A. He was.

18 Q. And the interview was done of Mr.
19 Rodriguez pursuant to a Kastigar letter?

20 A. I believe so.

21 Q. Which is a letter that essentially gives
22 him protection for the things he tells you guys?

23 A. It is.

24 Q. So that he can't get in trouble based on
25 what he tells you guys?

1 A. Correct.

2 Q. And I don't want to delve into the entire
3 interview. I want to talk specifically about what
4 he told you about taking the piece from Mr. Perez'
5 walker. Do you remember that?

6 A. I do.

7 Q. That was part of the interview that you
8 conducted?

9 A. Yes, it was.

10 Q. And one of the things you wrote in the
11 report that I told you about; is that right?

12 A. Yes.

13 Q. Okay. So Mr. Rodriguez told you that he
14 took the metal piece off of Mr. Perez' walker; is
15 that right?

16 A. Correct.

17 Q. And that during that time, Mr. Perez
18 appeared scared?

19 A. I believe that's what he told me.

20 Q. And that's what you wrote in your report?

21 A. Yes.

22 Q. And you wouldn't have written it in your
23 report if he hadn't told you that?

24 A. I don't think I would have.

25 Q. Now, he also told you that -- right after

1 he told you Mr. Perez appeared scared, he told you
2 that you Mr. Perez said he was "down for whatever,
3 as long as it's not me," right?

4 A. Correct.

5 Q. And he told you how he interpreted that
6 statement, didn't he?

7 A. He did.

8 Q. And Mr. Rodriguez told you that he
9 understood that what Mr. Perez meant is that he did
10 not want to be hurt and would go along with it, with
11 the hit, if he, Mr. Perez, did not otherwise have to
12 be involved?

13 A. Correct.

14 Q. That's what Mr. Rodriguez told you?

15 A. Yes.

16 Q. And you are aware, Agent Stemo, that this
17 report that you prepared -- I guess it's dated
18 November 6, 2017?

19 A. I would have to see the report.

20 Q. I can show it to you.

21 A. Yes.

22 MR. VILLA: May I approach?

23 THE COURT: You may.

24 A. November 6, 2017.

25

1 BY MR. VILLA:

2 Q. So the interview took place October 24th.

3 The report got finalized November 6, 2017, right?

4 A. Yes.

5 Q. But before it actually got finalized,
6 Mario Rodriguez had a chance to review the report,
7 didn't he?

8 A. He did.

9 Q. And he was able to review the report that
10 you prepared November 1st, 2017?

11 A. Do you mean the one for the October 24th
12 interview?

13 Q. Yes. So you prepared the October 24th
14 interview report, and then on November 1st Mr.
15 Rodriguez was able to review a draft?

16 A. I'm not sure of the date that he reviewed
17 it.

18 Q. If I showed you Agent Acee's report that
19 discussed the date, would that help refresh your
20 recollection?

21 A. It would.

22 MR. VILLA: May I approach?

23 THE COURT: You may.

24 BY MR. VILLA:

25 Q. I'm showing you Agent Acee's report, which

1 he dates November 20, 2017, as the day he wrote the
2 report -- or finished the report, right?

3 A. Correct.

4 Q. And does this discuss here, where I've
5 highlighted, when Mr. Rodriguez got to review your
6 report?

7 A. Yes, it does.

8 Q. Does that refresh your recollection?

9 A. Yes, it does.

10 Q. So is it correct that on November 1st,
11 2017, Mr. Rodriguez got to review your report?

12 A. Yes, it is.

13 Q. And he had an opportunity to clarify
14 details that you put in your report?

15 A. He did.

16 Q. And then after that clarification process,
17 you finalized the report on November 6, 2017?

18 A. Correct.

19 Q. And during that clarification process, Mr.
20 Rodriguez did not tell you that when you wrote in
21 your report that Mr. Perez appeared scared, that you
22 were incorrect?

23 A. Correct.

24 Q. He didn't say, "I never told you that on
25 October 24th, Agent Stemo; you need to fix that"?

1 A. Correct.

2 Q. Or that when you relayed how Mr. Rodriguez
3 interpreted Mr. Perez' statement, that you wrote
4 that down incorrectly?

5 A. Correct.

6 Q. He didn't say, "Wait a minute, wait a
7 minute. That's wrong, Agent Stemo. You should fix
8 that"?

9 A. No, he didn't.

10 Q. And you would agree with me, Agent Stemo
11 that you did another interview of Mario Rodriguez on
12 November 3, 2018?

13 A. November 3, 2018?

14 Q. I'm sorry. February 3, 2018?

15 A. I'd have to see the report to remember the
16 date.

17 Q. Absolutely.

18 MR. VILLA: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. VILLA:

21 Q. Agent Stemo, I'm showing you a report that
22 you dated February 3, 2018, right?

23 A. Yes.

24 Q. And does this refresh your recollection?

25 A. Yes.

1 Q. So you conducted another interview of
2 Mario Rodriguez on February 3, 2018, correct?

3 A. Yes.

4 Q. And the United States Attorney, Maria
5 Armijo, was present for that, correct?

6 A. She was.

7 Q. And you would agree with me that at that
8 meeting, Mario Rodriguez didn't say, "Hey, Agent
9 Stemo, I forgot to tell you, when I had a chance to
10 clarify your October 24th report, that what you
11 wrote down about Mr. Perez being in fear was wrong"?

12 A. Correct. He didn't bring that up.

13 Q. He never said that?

14 A. No.

15 Q. He never said, "When you wrote down in
16 your report how I interpreted Mr. Perez' statement
17 that he didn't want to get hurt, you wrote that down
18 wrong"?

19 A. He didn't say that.

20 Q. Or he didn't say, "I didn't tell that to
21 you, Agent Stemo"?

22 A. Correct.

23 Q. Because you would have written that in
24 your February 3rd report?

25 A. I would have.

1 Q. And you didn't?

2 A. Correct.

3 Q. Can we bring up Defendants' FV, as in
4 Victor. Agent Stemo, you're going to see here on
5 your screen what's already admitted as Defendants'
6 FV, and I'll show you the full document here just
7 for a minute. Have you seen this before?

8 A. I have.

9 Q. Now, Agent Acee testified about this
10 letter, that it was a letter written by Mario
11 Rodriguez. Is that what you understand this to be?

12 A. I do.

13 Q. Can you tell the jury how you know about
14 this letter?

15 A. This past Sunday, Task Force Officer Cupit
16 gave me a box, or attempted to give me a box of
17 Mario Rodriguez' belongings that were taken from him
18 from the PNM facility. I decided to go through it,
19 and I found this letter in it.

20 Q. Can you tell me, why did you go through
21 Mr. Rodriguez' box?

22 A. I didn't want to give anything back to Mr.
23 Rodriguez without going through it to make sure that
24 there wasn't anything in there that he shouldn't
25 have.

1 Q. Like what?

2 A. Paperwork, for example, or drugs.

3 Q. Weapons?

4 A. That's possible.

5 Q. Tell me about this box. What did the box
6 look like?

7 A. Just a standard box, cardboard.

8 Q. Where did the box come from?

9 A. I believe it was under Agent Sainato's
10 desk.

11 Q. Who is Agent Sainato?

12 A. He's one of my coworkers.

13 Q. He's an FBI agent?

14 A. Yes.

15 Q. Where is his desk?

16 A. At the FBI Albuquerque office.

17 Q. And the box that contained Mario
18 Rodriguez's belongings, including this letter, was
19 under his desk?

20 A. That's what I've been told.

21 Q. Okay. And you got the box, I think you
22 said, from Task Force Officer Cupit?

23 A. Well, he attempted to give it to me. I
24 went through it, and then we decided to let Agent
25 Sainato take care of it.

1 Q. I understand. Did you discover this
2 letter when you went through the box?

3 A. I did.

4 Q. And were you in Albuquerque when you did
5 that?

6 A. I was.

7 Q. And did Agent Sainato give you the box, or
8 Agent Cupit?

9 A. TFO Cupit did.

10 Q. And TFO, that's a task force officer?

11 A. It is.

12 Q. What is a task force officer?

13 A. It's a person that works for another
14 agency but is detailed to the FBI to assist in
15 investigations.

16 Q. So another agency, like not the FBI?

17 A. Correct.

18 Q. What agency, if you know, does Task Force
19 Officer Cupit work with?

20 A. The New Mexico Corrections Department.

21 Q. Task Force Officer Cupit has been
22 participating in this investigation, as well?

23 A. He has.

24 Q. Was he present when you went through the
25 box?

1 A. He was.

2 Q. Was Agent Sainato present?

3 A. He was not.

4 Q. Had you seen the box before under Agent
5 Sainato's desk?

6 A. I don't think I had.

7 Q. Are you aware of when the box came into
8 the possession of the FBI?

9 A. From firsthand knowledge, no.

10 Q. So it's just from what you've been told?

11 A. Correct.

12 Q. You worked this case with other employees
13 of the New Mexico Corrections Department, right?

14 A. Yes.

15 Q. Not just Task Force Officer Cupit?

16 A. Correct.

17 Q. There are, in fact, several others that
18 work with you guys?

19 A. Yes.

20 Q. Okay. And this particular letter you took
21 out of the box, and you provided it to the United
22 States Attorneys?

23 A. I did not personally.

24 Q. You took -- well, let's unpack that. You
25 took it out of the box?

1 A. Correct.

2 Q. Who did you provide it to?

3 A. I phoned Agent Sainato, who said he was
4 going to come in to the office later that day to
5 write a report detailing the discovery of it. And I
6 left it with him.

7 Q. You gave it to Agent Sainato?

8 A. Well, on his desk.

9 Q. On his desk?

10 A. Because he wasn't there.

11 Q. Have you seen it since then?

12 A. This letter?

13 Q. The letter.

14 A. No, I haven't.

15 Q. Why did you think you needed to provide
16 this particular letter to Agent Sainato, as opposed
17 to just giving it back to Mr. Rodriguez?

18 A. Because the information in there, I
19 believe, contradicts what he told us earlier.

20 Q. So the information in the letter
21 contradicts what Mario Rodriguez told you earlier?

22 A. Correct.

23 Q. Okay. So it's different than what he said
24 to you in the past?

25 A. It is.

1 Q. So let's talk about this. Have you seen
2 Mario Rodriguez's handwriting before?

3 A. I have.

4 Q. And does this look like his handwriting?

5 A. It looks very similar.

6 Q. Okay. So we'll go -- I'm going to blow it
7 up for you, and just take it a couple paragraphs at
8 a time. I think we lost a little bit of the text
9 there on the right-hand side.

10 Now, you recognize this form? I mean, it
11 seems like a piece of paper, but it's a specific
12 type of form. Have you seen this type of form
13 before?

14 A. I have.

15 Q. Okay. And where have you seen it?

16 A. Inmates in the custody of New Mexico are
17 issued these forms, I believe.

18 Q. Okay. And so I'm going to circle this box
19 here that says "PNM," and it's shaded in. Do you
20 know the significance of that?

21 A. I don't.

22 Q. Okay. It was like that when you
23 discovered it?

24 A. Yes.

25 Q. And the date I'll circle right here is

1 October 16, 2014?

2 A. Correct.

3 Q. And that's the date that was on it when
4 you found the letter, correct?

5 A. Correct.

6 Q. Okay. Now let's go to the first full
7 paragraph there. So the letter reads, "I, Mario
8 Rodriguez, Number 61059, am writing this here
9 statement on the behalf of Jerry Montoya. I swear
10 all that I state herein now is true to the best of
11 my knowledge."

12 And did I read that right?

13 A. You did.

14 Q. Okay. So it was your feeling, after
15 reading this, that what he said in here contradicted
16 other things that he said to you guys at other
17 periods of time?

18 A. What's in the entire letter, not just what
19 you read, yes.

20 Q. Yeah, that's what I mean. It's in the
21 entire letter. Thank you. Okay. But that's right?
22 That was your opinion after reading the letter?

23 A. Yes.

24 Q. Okay. The next line says, "I'm a
25 co-defendant of Jerry Montoya in CR-2014-00345 and

1 CR-2014-00310, as well as an unknown case" -- and he
2 puts sort of a blank parenthetical. "I have never
3 made any statement involving these cases until now."

4 Do you see that?

5 A. I do.

6 Q. Do you know these cases that he put in
7 here to be the case numbers for the state charges
8 that came out of the Javier Molina homicide?

9 A. No, I don't know those numbers.

10 Q. Do you know Jerry Montoya to be one of the
11 individuals involved in the Javier Molina homicide?

12 A. I do.

13 Q. Do you know if he was charged in state
14 court with the Javier Molina homicide?

15 A. Yes.

16 Q. And the next sentence, before we scroll
17 down says, "I am writing this of my own free will
18 and no one has asked nor" -- and we'll have to go on
19 here. It says, "No one has asked nor threatened me
20 to do so."

21 Right?

22 A. Yes.

23 Q. And he says, "I have read some of the
24 statements made within the discovery/disclosures and
25 found it only right to speak up due to Timothy

1 Martinez' and Jason Wright's statements from March
2 10, 2014, are false"?

3 A. Yes.

4 Q. Right? So you know that Timothy Martinez
5 was one of the co-defendants or someone that's pled
6 guilty to the Javier Molina homicide?

7 A. Yes.

8 Q. Okay. And what Mr. Rodriguez is
9 purporting to say here is that his statements on
10 March 10th were false?

11 A. Correct.

12 Q. And an individual named Jason Wright's
13 statements were also false?

14 A. Right.

15 Q. Do you believe that that paragraph is
16 different or inconsistent with things Mario
17 Rodriguez has told you before?

18 A. Yes.

19 Q. The next paragraph here says, "Never once
20 did I witness/see Jerry Montoya in possession of any
21 sort of weapon or assault Javier Molina."

22 Did I read that part right?

23 A. You did.

24 Q. Okay. That's different or inconsistent
25 with things Mario Rodriguez has said before, right?

1 A. It is.

2 Q. The next line said, "I was in Javier
3 Molina's room and never seen any sort of drugs or
4 was" -- I'm not sure what that is -- "or Javier
5 Molina shooting up, as Timothy Martinez has
6 alleged."

7 I read that part right?

8 A. You did.

9 Q. Okay. That's different than what Mario
10 has told you?

11 A. Yes.

12 Q. The next sentence there, "There was food
13 being prepared/gathered in a brown canteen bag for a
14 spread (a prison term for a large pod meal). I was
15 also in Javier Molina's cell looking at tattoo work
16 I had done on" -- we'll go to the next -- "looking
17 at tattoo work that I had done on Javier Molina."

18 Right?

19 A. Um-hum.

20 Q. That's different than what Mario Rodriguez
21 has said before, isn't it?

22 A. It is.

23 Q. The next sentence here, "I was drug tested
24 the day I got to PNM North facility in Santa Fe and
25 came out clean for all drugs. At no time did I hear

1 footsteps or anyone call out the word 'rat.' I
2 would have definitely heard any such language, being
3 that term in prison is a word rarely used without
4 drawing all such attention."

5 So I think that's a sentence, although
6 there is a comma there, but did I read that part
7 right?

8 A. You did.

9 Q. That last half is different than what
10 Mario Rodriguez had said before, isn't it?

11 A. Correct.

12 Q. Then he says, "Also I'd like to note that
13 it'd be impossible for anyone to rush into a room
14 with anyone other than that room's occupants without
15 the rooms in Las Cruces prison being very
16 overcrowded. What I am saying is there is no room
17 for individuals to be going in and out of a room in
18 such a rush as the agents take and reports on the
19 camera footage."

20 Did I get that part?

21 A. You did.

22 Q. Okay. That's different than what he's
23 told before, isn't it?

24 A. I don't think I asked him about cells and
25 how many people could fit in there.

1 Q. All right. Fair enough. The next
2 sentence says, "At the bottom of the stairwell, I
3 heard Javier Molina yell to Jerry Montoya not to
4 come near him or else he'd hit him (punch him.)"

5 That part is different than what Mario
6 Rodriguez told you, isn't it?

7 A. Correct.

8 Q. And then we'll pick up the rest of the
9 letter here. Starting about there, "Javier Molina
10 was blocking the exit area of the stairwell. So
11 Jerry Montoya had no choice but to attempt to leave
12 the stairs going near Mr. Molina."

13 That sentence is different than what he's
14 told you?

15 A. It is.

16 Q. "Not at any point in time did I see any
17 sort of weapons or Mr. Montoya assault Mr. Molina."

18 That's also different?

19 A. It is.

20 Q. Much different?

21 A. It is.

22 Q. The last sentence, I think, "I will
23 testify to this statement under oath due to the
24 allegations made by Mr. Martinez and Mr. Wright
25 being false. End of statement."

1 Did I read that right?

2 A. Yes.

3 Q. And it's signed, "Mario Rodriguez." Do
4 you have any doubt that that's Mario Rodriguez'
5 signature?

6 A. I don't.

7 Q. Thank you, Agent Stemo.

8 I want to talk a little bit about Timothy
9 Martinez. Oh, I'm sorry. Before I move off the
10 subject of the letter, can you tell me if you know
11 how long the FBI had this letter in its possession
12 before you discovered it?

13 A. I think Agent Sainato told me he picked up
14 the box in the summer of 2017.

15 Q. So that would have been six, eight months
16 ago?

17 A. Correct.

18 Q. Okay. And it was not provided to the
19 United States -- well, let me ask you this: Do you
20 know when it was actually provided to the United
21 States Attorneys?

22 A. A copy of it was.

23 Q. I'm sorry. Do you know when a copy was
24 provided to the United States Attorneys?

25 A. I believe it was this past Sunday.

1 Q. Do you know if that was after the
2 Government had already rested its case and called
3 Mario Rodriguez in this trial?

4 A. I believe so.

5 Q. Okay. Now, let me talk to you about
6 Timothy Martinez. You know that Timothy Martinez is
7 working for the Government and has testified on
8 behalf of the Government, correct?

9 A. Correct.

10 Q. And you were present for an interview or
11 debrief of Mr. Martinez that took place on December
12 29, 2016?

13 A. I'd have to look at the report.

14 Q. Absolutely.

15 MR. VILLA: May I approach?

16 THE COURT: You may.

17 BY MR. VILLA:

18 Q. Agent Stemo, is this a report -- it's
19 actually dated January 3rd of 2017. This is an FBI
20 report, right?

21 A. It is.

22 Q. And it says -- it discusses an interview
23 on December 29, 2016?

24 A. It does.

25 Q. Will you look at it and see if it

1 refreshes your recollection if you were present?

2 A. I will. I was.

3 Q. Is this an interview of Timothy Martinez?

4 Take your time.

5 A. It's redacted, so I can't really tell.

6 Q. I understand.

7 MR. VILLA: So, your Honor, I'd ask that
8 based on the previous understandings in this case
9 that the Government -- if the Government will agree
10 that this was Timothy Martinez?

11 MS. CASTELLANO: I'll have to take a look
12 at it, Your Honor.

13 THE COURT: All right.

14 MR. VILLA: Mr. Castellano, what's the
15 Bates number?

16 MS. CASTELLANO: It's 28257. I think this
17 is the report regarding Timothy Martinez.

18 THE COURT: All right. Is that sufficient
19 for you, Mr. Villa?

20 MR. VILLA: That is, Your Honor.

21 BY MR. VILLA:

22 Q. Agent Stemo, if you'd like to review the
23 contents a little bit more to satisfy yourself that
24 this was an interview of Mr. Martinez, by all means
25 just let me know. Let me ask you: You were present

1 for an interview of Mr. Martinez?

2 A. I was.

3 Q. And you weren't the primary interviewer,
4 were you?

5 A. I was not.

6 Q. The report that I showed you was actually
7 authored by Mark Myers?

8 A. Yes.

9 Q. He's an employee of the New Mexico
10 Corrections Department that was also working with
11 the FBI?

12 A. He was.

13 Q. And present at that interview of Mr.
14 Martinez was Agent Acee, correct?

15 A. Yes.

16 Q. And Mr. Myers, of course, was present?

17 A. He was.

18 Q. Now, I'll test your memory here a little
19 bit. Do you know that Mr. Martinez had, at the time
20 of this interview, been incarcerated at the Torrance
21 County Detention Facility?

22 A. I don't know when he was housed there, but
23 he was at one point in time.

24 Q. Okay. And in the course of this
25 interview, he never mentioned at any point in time

1 any statements that Rudy Perez made to him while
2 being incarcerated at the Torrance County Detention
3 Facility?

4 A. Not any that I remember.

5 Q. And if you'd like to look at the report,
6 I'm happy to show it to you. Do you need to look at
7 the report to help refresh your memory?

8 A. I do.

9 MR. VILLA: May I approach?

10 THE COURT: You may.

11 BY MR. VILLA:

12 Q. Agent Stemo, have you finished reading the
13 report?

14 A. I have.

15 Q. How many pages is it?

16 A. Four.

17 Q. Did you have enough time to get through it
18 all?

19 A. I did.

20 Q. Does it help refresh your memory about
21 what Mr. Martinez said or didn't say?

22 A. It does.

23 Q. And you would agree with me that it
24 doesn't reflect anywhere in that report that Mr.
25 Martinez made any sort of statements to you guys

1 about something Mr. Perez said to him while they
2 were at the Torrance County Detention Facility?

3 A. I believe on this date, the interview was
4 conducted in two segments. One was pertaining to
5 green lights or threats towards other people; and
6 then one was pertaining to the Javier Molina
7 defendants. That 302 that you gave me pertains to
8 the threats.

9 Q. Okay. Can you tell me if, from your
10 memory, that Mr. Martinez said anything at all in
11 either two segments about a statement Mr. Perez
12 made?

13 A. Not that I remember off the top of my
14 head.

15 Q. Okay. So you don't remember. Let me back
16 up. You know that Mr. Martinez at one point was
17 incarcerated at the Torrance County Detention
18 Facility?

19 A. Yes.

20 Q. And he was incarcerated there before he
21 agreed to talk to you guys, correct?

22 A. Right.

23 Q. And after he agreed to talk to you guys,
24 he was then moved to a different place?

25 A. He was.

1 Q. Do you know that while he was at the
2 Torrance County Detention Facility, he was with Mr.
3 Perez?

4 A. I believe so.

5 Q. And you would agree with me that this
6 interview in December of 2016 was the first time Mr.
7 Martinez agreed to talk to the FBI?

8 A. I believe it was.

9 Q. So it was right after or soon after he was
10 moved out of the Torrance County Detention Facility?

11 A. Probably.

12 Q. Okay. But you know that after that period
13 of time, after that debrief, he never went back to
14 Torrance?

15 A. I don't know that for sure, but I'd assume
16 so.

17 Q. Okay. And you definitely don't remember
18 him ever saying that Mr. Perez told him that he had
19 to do his part for la familia, because everyone has
20 a part to play, even if it's just to keep your mouth
21 shut?

22 A. Not that I remember.

23 Q. Agent Stemo, you know who Billy Cordova
24 is, correct?

25 A. I do.

1 Q. And you know that Billy Cordova was opened
2 as a confidential human source or an informant by
3 the FBI sometime prior to January 2017?

4 A. Yes.

5 Q. And you know that he was closed as a
6 confidential human source or informant by the FBI
7 sometime in January of 2017?

8 A. Correct.

9 Q. But after that time, in April of 2017, he
10 was tasked with conducting consensual recordings of
11 Gabriel Valdivia, wasn't he?

12 A. He was.

13 Q. And that was an investigation that you
14 were overseeing?

15 A. I wouldn't say overseeing.

16 Q. Well, did you write an FBI 302 or FBI
17 report about Mr. Cordova's recordings of Mr.
18 Valdivia?

19 A. I did.

20 Q. And so you were involved in the
21 investigation?

22 A. I was.

23 Q. So I know you wouldn't say that you
24 oversee it, but how would you characterize your
25 involvement?

1 A. I received the recording device, and had
2 it downloaded. I also listened to it and made a
3 report from it.

4 Q. And, again, that was done in April 2017,
5 approximately three or four months after Mr. Cordova
6 was closed by the FBI?

7 A. I'd have to see the report for the exact
8 date.

9 MR. VILLA: May I approach, Your Honor?

10 THE COURT: You may.

11 A. Correct, April 2017.

12 BY MR. VILLA:

13 Q. And April 2017 is, again, just two or
14 three months after Mr. Cordova was closed by the
15 FBI?

16 A. Correct.

17 MR. VILLA: May I have a moment?

18 THE COURT: You may.

19 MR. VILLA: I'll pass the witness.

20 THE COURT: Thank you, Mr. Villa.

21 Do any of the other defendants have direct
22 examination of Ms. Stemo?

23 MS. JACKS: I have a few questions.

24 THE COURT: All right. Ms. Jacks.

25 MS. JACKS: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MS. JACKS:

3 Q. Good afternoon, Agent Stemo.

4 A. Good afternoon.

5 Q. I just have a few questions about the
6 interviews that Mr. Villa talked to you about of
7 Mario Rodriguez on October 24, 2017, and again on
8 February 3, 2018.

9 A. Okay.

10 Q. Okay. Let me just -- just let me know if
11 you need to see the reports, because I have extra
12 copies here.

13 A. Okay.

14 Q. Okay? What I want to ask you about is on
15 October 24, 2017, when you spoke with Mario
16 Rodriguez, did you talk to him about the Molina
17 homicide?

18 A. I did.

19 Q. And, specifically, did you talk to him
20 about a person named Lupe Urquizo?

21 A. I'd have to see the report.

22 Q. Okay.

23 MS. JACKS: May I approach, Your Honor?

24 THE COURT: You may.

25

1 BY MS. JACKS:

2 Q. It's nine pages, so take your time, and
3 let me know when you're ready.

4 A. Thank you. Okay.

5 Q. Are you ready?

6 A. Yes.

7 Q. So I think my question that was pending
8 was: Did you talk to him about an individual named
9 Lupe Urquizo in that interview?

10 A. Yes.

11 Q. From October 24th?

12 A. Yes.

13 Q. And Mr. Urquizo had been transferred down
14 to Southern New Mexico Correctional Facility on
15 March 6th of 2014?

16 A. I believe so.

17 Q. And during that interview on October 24th,
18 did Mr. Rodriguez ever tell you anything about
19 exchanging notes with Lupe Urquizo, the afternoon of
20 March 6, 2014?

21 A. He did not.

22 Q. And I want to ask you the same questions
23 about your February 3, 2018, interview with Mario
24 Rodriguez. Would you like to see that before I do
25 that?

1 A. Yes.

2 Q. Are you done?

3 A. I am.

4 Q. Agent Stemo, you had a chance to review
5 your report from February 3, 2018, right?

6 A. Yes.

7 Q. And that was an interview you had with Mr.
8 Rodriguez after the start of this trial, right?

9 A. Yes.

10 Q. Just before he was going to testify?

11 A. I'm not sure when he testified.

12 Q. During the course of that interview on
13 February 3rd of 2018, did Mr. Rodriguez tell you
14 anything about exchanging notes with Lupe Urquizo
15 the afternoon of March 6, 2014?

16 A. He did not tell me that personally. I
17 believe he told Agent Acee about that before.

18 Q. Okay. Is there anything in your report
19 regarding that?

20 A. No.

21 Q. Okay. So you have -- you believe there
22 was a conversation with Agent Acee?

23 A. Yes. I think I wasn't present for it.

24 Q. I'm sorry. On February 3rd?

25 A. No, at a prior date.

1 Q. Okay. Do you know what date that was?

2 A. I don't.

3 Q. And you're saying you were present? Or
4 you weren't present?

5 A. I believe I was.

6 Q. You believe you were?

7 A. Yes.

8 Q. Okay. And right now, can you tell us
9 approximately when you're thinking that might have
10 happened?

11 A. It could have been in November of 2017.

12 Q. Okay.

13 MS. JACKS: Thank you.

14 THE COURT: Ms. Jacks, are you done?

15 MS. JACKS: Well, I want to follow up on
16 that, perhaps, so I may not be done, depending on --

17 THE COURT: Okay.

18 MS. JACKS: Okay.

19 THE COURT: Would this be a good time to
20 break?

21 MS. JACKS: It's a good time to stop.

22 THE COURT: All right. I do want to
23 remind the jury of a few things that are especially
24 important. Until the trial is completed, you're not
25 to discuss this case with anyone, whether it's

1 members of your family, people involved in the
2 trial, or anyone else, and that includes your fellow
3 jurors. If anyone approaches you and tries to
4 discuss the trial with you, please let me know about
5 it immediately.

6 Also, you must not read or listen to any
7 news reports of the trial. Again, don't get on
8 internet and do any research for purposes of this
9 case.

10 And finally, remember that you must not
11 talk about anything with any person who is involved
12 in the trial, even if it doesn't have anything to do
13 with the trial.

14 If you need to speak with me, simply give
15 a note to one of the Court Security Officers or Ms.
16 Standridge.

17 I'll try not to repeat these tomorrow
18 morning. I may, as the day goes, depending on where
19 we are, repeat them in the afternoon. But when we
20 take breaks, do keep them in mind each time. We've
21 all done an excellent job of working hard on that,
22 so let's keep it up here as we bring the case to a
23 conclusion.

24 All right. I appreciate your hard work.
25 We'll see you at 8:30 in the morning. Y'all have a

1 good evening. Be safe in your travels.

2 All rise.

3 (The jury left the courtroom.)

4 THE COURT: All right. Y'all have a good
5 evening.

6 MS. FOX-YOUNG: Your Honor, we have one
7 issue.

8 THE COURT: I think we better bring it up
9 in the morning.

10 MR. VILLA: It's critical.

11 THE COURT: Well, I'll give you 15
12 seconds. Tell me how critical it is.

13 MS. ARMIJO: Your Honor, Agent Acee was on
14 the stand on Monday. We indicated that he was not
15 available on Wednesday. That's why we opposed them
16 interrupting their case. He is not available
17 tomorrow.

18 THE COURT: He needs to show up tomorrow.
19 Okay? We've got a trial going on. I don't know
20 what else is more important in Mr. Acee's life, but
21 he needs to be here.

22 All right. See you in the morning.

23 MS. FOX-YOUNG: Thank you, Your Honor.

24 (The Court stood in recess.)

25